

GROUND LEASE

By and Between

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA

("Agency")

and

SANTA BARBARA ASSOCIATES

("Lessee")

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## GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into by and between the REDEVELOPMENT AGENCY of the CITY of SANTA BARBARA ("Agency") and SANTA BARBARA ASSOCIATES, a California general partnership ("Lessee"). Agency and Lessee agree as follows:

### ARTICLE 1.0 SUBJECT OF LEASE

#### 1.1 Purpose of Lease.

The purpose of this Lease is to effectuate the Redevelopment Plan ("Redevelopment Plan") for the Santa Barbara Central City Redevelopment Project Area (as defined under Section 1.4 below, "Project Area"). In order to implement the Redevelopment Plan, Agency intends to acquire and redevelop certain real property in the Project Area as part of a retail center. The lease, redevelopment and operation of the real property described herein by Lessee pursuant to this Lease, and the fulfillment generally of this Lease, are in the vital and best interest of the City of Santa Barbara, California ("City") and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

Agency has heretofore entered into that certain Disposition and Development Agreement dated September 4, 1987 and effective November 23, 1987 ("DDA") with Lessee. The DDA provides for the construction, development, ownership and operation of a regional shopping center ("Retail Center") on certain real property commonly known as the Paseo Nuevo Site ("Project Site"), which Project Site is shown on the Site Map attached hereto and incorporated herein as Exhibit "1" ("Site Map"). The Lease Premises (as defined in Section 1.6 below, "Lease Premises") is that portion of said Project Site which, pursuant to the DDA, has been acquired by Agency and is conveyed to Lessee by this Lease for construction, development, ownership and operation of Mall Stores, pedestrian and paseo areas, and an Arts Complex.

#### 1.2 Definition of Terms.

All capitalized terms used herein may be defined where first used in this Lease and/or in Article 15.0. In addition, all capitalized terms first used in Article 3.0 are defined in Section 3.2.5.

#### 1.3 The Redevelopment Plan.

The Redevelopment Plan for the Project Area was approved and adopted by the City Council of the City of Santa

Barbara on November 14, 1972 by Ordinance No. 3566, and was amended on August 30, 1977 by Ordinance No. 3923. The Redevelopment Plan as so amended is referred to herein as the "Redevelopment Plan." This Lease shall be subject to the provisions of the Redevelopment Plan which is incorporated herein by this reference and made a part hereof as though fully set forth herein. Any amendment to the Redevelopment Plan which changes the restrictions or controls that apply to the Lease Premises, the Onsite Parking Tract and/or the Offsite Parking Parcels (defined under Section 1.7 below) shall require the written consent of Lessee. In addition, Lessee shall have the right to challenge, as a member of the public, amendments to the Redevelopment Plan which do not directly affect the restrictions and controls governing the Project Site, the Onsite Parking Tract and the Offsite Parking Parcels.

#### 1.4 The Project Area.

The Project Area is located in the City, the exact boundaries of which are specifically described in the Redevelopment Plan and in instruments recorded respectively as Document No. 48982 on December 14, 1972 and as Document No. 77-44507 on September 1, 1977 of the Official Records of Santa Barbara County of the State of California, which instruments are incorporated herein by reference and made a part hereof.

#### 1.5 Project Site.

1.5.1 Project Site Parcels. The Project Site has been legally subdivided into the following four (4) tracts:

- (A) Lease Premises;
- (B) Broadway Tract;
- (C) Nordstrom Tract; and
- (D) Onsite Parking Tract.

The Lease Premises, Broadway Tract, Nordstrom Tract and Onsite Parking Tract are hereafter collectively referred to as the "Project Site Tracts" and individually as a "Project Site Tract." The Broadway Tract and the Nordstrom Tract are hereafter sometimes collectively referred to as the "Major Tracts" or individually as a "Major Tract."

1.5.2 Rehabilitation Parcels. Contiguous to the Project Site (but not a part thereof) are certain parcels of real property shown on the Site Map as "Ott and Parma Rehabilitation Parcels," which may be incorporated into the Retail Center in accordance with the REA.

1.5.3 Offsite Appurtenant Parking. Adjacent to the Project Site (but not a part thereof) are certain noncontiguous parcels shown on the Site Map as Parcels A and B, upon which the Offsite Appurtenant Parking (as defined in Section 1.7 below) is to be constructed, operated and maintained.

1.5.4 Contiguous Parcels. Contiguous to the Project Site (but not a part thereof) and located within the two square block area surrounded by Chapala, State, Ortega and Canon Perdido Streets are certain parcels of real property shown on the Site Map (hereafter, collectively referred to as "Contiguous Parcels" and individually as a "Contiguous Parcel") which may be granted certain rights to use portions of the Retail Center in accordance with Easement, Covenant and Restriction Agreements by and between Lessee, Agency, and the owner of such Contiguous Parcel ("Contiguous Owner").

#### 1.6 The Lease Premises.

The Lease Premises is that portion of the Project Site shown on the Site Map as "Lease Premises." The Lease Premises are legally described in the "Legal Description of Lease Premises" which is attached hereto as Exhibit "2" and incorporated herein by this reference. The Lease Premises are composed of the Mall Stores, pedestrian and paseo areas, and the Arts Complex.

#### 1.7 Appurtenant Parking Parcels.

1.7.1 Appurtenant Parking. The Retail Center is to be supported by the construction, operation and maintenance of certain public parking facilities referred to herein as the "Appurtenant Parking" and other appurtenant rights and interests (such Appurtenant Parking and appurtenant rights and interests are hereinafter called the "Appurtenant Interests") to be provided by Agency and/or City pursuant to the DDA, that certain Paseo Nuevo Parking Agreement dated November 1, 1987, executed by and among Agency, City, Lessee, and the Majors (the "Parking Agreement"), the respective Parking Covenants executed concurrently herewith by and among Agency and/or City, Lessee and the Majors (as defined under Section 2.6 below) (the "Parking Covenants") and recorded against each of the Onsite Parking Tract and Offsite Parking Parcels, and the Construction, Operation and Reciprocal Easement Agreement executed concurrently herewith by and among Agency, Lessee and the Majors (the "REA").

1.7.2 Onsite Parking. The Onsite Parking Tract, as shown on the Site Map, is owned by Agency. Lessee and each of the Majors shall construct or cause the construction of a parking structure ("Onsite Appurtenant Parking") on the Onsite Parking Tract in accordance with the terms of the REA. After

completion of construction of the Onsite Appurtenant Parking and the opening of the Offsite Appurtenant Parking (as defined below), the Onsite Appurtenant Parking shall be operated in accordance with the Parking Covenants recorded against the Onsite Parking Tract.

1.7.3 Offsite Parking. Parcels A and B shown on the Site Map are noncontiguous to the Project Site (but not a part of the Project Site) and owned by Agency and/or City (hereafter referred to individually as "Offsite Parking Parcel" and collectively as "Offsite Parking Parcels"). Agency shall construct, or cause to be constructed with the cooperation of the City, a parking structure ("Offsite Appurtenant Parking") on each of the Offsite Parking Parcels to accommodate the Retail Center in accordance with the agreements described in Section 1.7.1 above.

1.7.4 Cooperation Agreement. In order to obtain City's cooperation and agreement that City covenant to comply with the DDA, the Parking Covenants, the REA, and the Parking Agreement and to perform the other obligations set forth therein, Agency has entered into that certain Downtown Retail Revitalization Project Cooperation Agreement dated November 1, 1987, executed by and between Agency and City (the "Cooperation Agreement"). Agency hereby covenants and agrees that it shall cooperate, join and assist in any action by Lessee, Developer and/or a Major against City to enforce the obligations of City under the Parking Covenants, the REA and/or the Parking Agreement. In addition, Agency shall exercise due diligence and best efforts to cause City to comply with, or take action to cause City to comply with, the terms of the Cooperation Agreement.

1.7.5 De La Guerra Place. During the Lease Term (as defined below), Lessee shall maintain a portion of the Lease Premises designated on the Site Map as "De La Guerra Place" open for pedestrian ingress and egress to and from the Shopping Center and the adjoining public right-of-ways in accordance with Section 3.8.2 of the REA.

City has granted to Developer an easement over that portion of De La Guerra Street extending from the Lease Premises to State Street ("De La Guerra Street") for pedestrian ingress and egress and service vehicle use to and from the Shopping Center and the adjoining public right of ways, construction, maintenance and repair of utility lines, landscaping, and construction, maintenance and repair of nonbuilding improvements ("De La Guerra Easement"). The De La Guerra Easement shall constitute an appurtenance to this Lease. City has closed De La Guerra Street to vehicular traffic, except for service vehicle use, and limited the public use thereof to pedestrian traffic.

## 1.8 Parties to the Lease.

### 1.8.1 The Agency.

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

The principal office of the Agency is located at City Hall, P.O. Drawer P-P, 735 Anacapa Street, Santa Barbara, California 93102.

"Agency" as used in this Lease includes the Redevelopment Agency of the City of Santa Barbara and any assignee of, or successor to, its rights, powers and responsibilities.

The Executive Director of Agency is hereby appointed by Agency as its representative with respect to any and all consents or approvals to be given by Agency under this Lease, or other action required to be taken by Agency hereunder; unless otherwise expressly provided ("Agency Representative").

### 1.8.2 The Lessee.

(A) Ownership. The Lessee is Santa Barbara Associates, a California general partnership, in which the partners as of the date hereof are JMB/Paseo Nuevo Associates, an Illinois general partnership ("JMB") and Paseo Nuevo Associates, a California limited partnership ("PNA"), in which John H. Reininga, Jr. and Alan M. Roodhouse are the general partners as of the date hereof, and John Louis Field and various associates of Reininga and Roodhouse are the limited partners as of the date hereof. The principal office of Lessee is located at 600 Montgomery Street, Suite 3600, San Francisco, California 94111.

Alan M. Roodhouse is hereby appointed by Lessee as the representative of Lessee during the construction and development of the Improvements (as defined below) on the Lease Premises, said appointment to be effective until Lessee otherwise notifies Agency in writing, but Roodhouse acting alone shall not have authority to alter or modify the provisions hereof.

Lessee shall identify and disclose the persons and entities having an interest in Lessee, PNA, JMB, and Construction Manager (defined below), and shall submit to Agency such instruments and legal documents necessary to identify such persons and entities. Upon request, Lessee shall submit to Agency certificates specifying information sufficient to allow Agency to determine the ownership interests in Lessee. However, neither Lessee, PNA nor JMB

shall be required to provide Agency with a copy of its partnership agreement.

Notwithstanding any other provision hereof, all of the terms, covenants and conditions of this Lease shall be binding on and shall inure to the benefit of Lessee and the permitted successors and assigns of Lessee. Nothing contained herein shall in any way limit the right of Lessee to make permitted changes in its membership, management or control in accordance with Sections 8.2.1 or 8.2.2 of this Lease. Wherever the term "Lessee" is used herein, such term shall include any permitted nominee or assignee as herein provided.

(B) Construction Management.

(1) Construction Management Agreement. Lessee has entered into that certain "Construction Management Agreement" with Reininga Corporation, a California corporation ("Reininga"), which agreement has been delivered to and approved by Agency. Pursuant to such Construction Management Agreement, Reininga agrees to act as construction manager for the construction of the Lease Premises ("Construction Manager"). As more particularly set forth in such agreement, Reininga may be terminated by Lessee as the Construction Manager only for specific defaults or events. If Lessee terminates Reininga under the Construction Management Agreement, Lessee shall provide Agency with an explanation of the basis for such termination and shall, if requested by Agency, provide Agency with a certification that Lessee believes in good faith that the termination of Reininga as Construction Manager is justified under the terms of the Construction Management Agreement. As between Agency and Lessee, such certification shall be conclusive evidence of the propriety of the termination of Reininga as Construction Manager, and Agency shall not have the right to question the merits of Lessee's decision to terminate Reininga as Construction Manager. The provisions of the Construction Management Agreement relating to termination of Reininga as Construction Manager shall not be altered without the consent of Agency (although Agency shall not be deemed a third party beneficiary of such provisions). In all other respects, and subject to the provisions of this Lease and the other agreements between Agency and Lessee, the Construction Management Agreement may be amended without the consent of Agency.

(2) Change in Construction Manager. If Reininga is terminated as the Construction Manager and such termination is in accordance with the provisions of Section 1.8.2(B)(1) above or is otherwise consented to by Agency in writing, then Lessee shall be entitled to finish construction itself, so long as a JMB Entity reasonably satisfactory to Agency is then a general partner in Lessee, or enter into a construction management agreement for construction of the



Lease Premises on terms and conditions determined by Lessee with an experienced developer (which may or may not be affiliated with JMB) reasonably acceptable to Agency. For this purpose, Agency hereby approves in advance any JMB Entity (as defined in Section 8.2.1(D) hereof) as a substitute construction manager. If a default occurs in the construction of the Lease Premises or in the performance of other duties delegated by Lessee to Reininga under the Construction Management Agreement, Agency shall provide Lessee with notice of such default and a reasonable period of time in which Lessee can terminate the Construction Management Agreement and substitute a new construction manager. In such event, the Schedule of Performance (attached hereto as Exhibit "4") shall be adjusted appropriately so as to provide reasonable periods for Lessee itself or the new construction manager, as the case may be, to finish the tasks previously delegated to Reininga.

(3) Effectiveness. The provisions set forth in this Section 1.8.2(B) shall only be effective until the completion of construction of the Improvements on the Lease Premises.

(C) Management of Lease Premises.

Upon completion of the construction provided for hereunder and through the Lease Year (as defined in Section 2.3 below) following the Establishment Year (as defined under Section 3.2.5(G) below), Lessee shall operate the Lease Premises with onsite management authorized to deal with Agency (except that Lessee will not be required to provide the management of businesses of the Mall Tenants and concessionaires that will be occupying space within the Lease Premises). It is anticipated that Reininga shall manage the Lease Premises following completion of construction of the Improvements thereon, but Lessee reserves the right to substitute other management and to change the terms and conditions of such management at any time and from time to time.

ARTICLE 2.0 LEASE OF THE LEASE PREMISES

2.1 Lease Consideration.

For and in consideration of the execution and delivery of this Lease by Agency and the rents, conditions, covenants and agreements set forth herein, and the Developer's Consideration of Seven Million Seven Hundred Eighty Thousand Dollars (\$7,780,000) (reduced by the credits described in Attachment 5 of the DDA) paid to Agency concurrently with the Close of Escrow as provided in Section 205 of the DDA, Agency hereby leases the Lease Premises to Lessee and Lessee does hereby take and lease the Lease Premises from Agency. Except as provided in Section 13.4.3, Lessee shall not be entitled to return of the Developer's consideration or any portion thereof

if this Lease terminates prior to the expiration of the Lease Term (as defined below).

## 2.2 Term of the Lease.

The term of this Lease (the "Lease Term") shall be for a period of the First Lease Year (defined below) plus seventy-five (75) years, commencing on the commencement date of the First Lease Year (the "Effective Date"), and terminating seventy-five (75) years following the end of the First Lease Year, or on the date resulting from an earlier termination as hereinafter set forth.

2.3 Definition of First Lease Year and Lease Year. For the purpose of this Lease and the rental provisions herein, with the exception of the First Lease Year, "Lease Year" shall mean twelve (12) full calendar months commencing on January 1 after the date of recordation of a memorandum of this Lease in the Official Records of Santa Barbara County, and on each subsequent January 1 thereafter for the term of the Lease. Notwithstanding the above, the "First Lease Year" shall mean the period commencing on the date of the recordation of a memorandum of this Lease, and ending on the immediately following December 31.

## 2.4 Possession.

Agency shall deliver possession of the Lease Premises to Lessee in the condition of title required by Section 208 of the DDA, free and clear of the rights of all third parties except as provided herein, and Lessee shall accept and enter into possession of the Lease Premises and shall hold the Lease Premises in quiet enjoyment, concurrent with the beginning of the Lease Term.

## 2.5 Representations.

(A) Agency represents to Lessee that:

(1) Agency owns the Lease Premises in fee simple or has right of possession sufficient to enter into this Lease for the Lease Term in the condition of title described in Section 208 of the DDA.

(2) Agency has the power and authority to enter into this Lease and perform all obligations and agreements incidental or pertinent to the Lease including the Parking Agreement and the REA.

(3) Except as disclosed to Lessee on or prior to the Effective Date, the authority of Agency to enter into this Lease is not being challenged, and has not been suspended or prohibited, in or by a court of competent jurisdiction.

(4) Agency will take all actions necessary to acquire fee title to the Lease Premises if Agency acquires only a possessory interest in any or all of the Lease Premises prior to acquisition of fee title. Agency shall indemnify Lessee if Agency thereafter fails to acquire fee title, and will be responsible for all damages to Lessee's leasehold interest resulting therefrom.

(B) Lessee has examined the Lease Premises and hereby accepts possession of the Lease Premises in its "as is" condition in accordance with Section 215 of the DDA.

## 2.6 Lessee's Right of First Negotiation.

2.6.1 Transfer of Project Site Tract. Provided that Lessee is not in Default under this Lease, if Agency, at any time during the Lease Term, determines to sell, exchange or transfer, other than by mortgage, trust deed or other hypothecation, its right, title or interest in the fee to a Project Site Tract to any entity other than the City, any other governmental agency or a not-for-profit corporation formed by or on behalf of Agency, the City or any other governmental agency (all of which are referred to as "Permitted Transferees" or "Permitted Transferee" as the context may require), Agency (except in the event (i) that applicable law requires the sale or disposition of the Project Site Tract by other means or procedures or (ii) of a foreclosure or trustee's sale by the mortgagee or trustee, Agency hereby agreeing that, in the event of default of any such mortgage, trust deed or other hypothecation, Agency shall not grant or give a deed in lieu of foreclosure for a Project Site Tract and this Lease and Lessee's rights below shall be superior to and apply to any such deed in lieu) shall afford Lessee the right of first negotiation to be the purchaser of such transfer as set forth below:

(A) Public Auction. Agency may offer the Project Site Tract for sale, exchange or transfer by public auction or public bidding (sealed or otherwise); provided, however: (i) Agency shall provide Lessee with a copy of such notice as Agency provides to the public generally, (ii) Lessee is not excluded as a bidder, (iii) if sealed bidding is used, Agency shall provide for oral up-bidding subsequent to the sealed bid process, if not prohibited by law, and (iv) the highest bidder at any such public auction or public bidding shall be the only third party to whom Agency shall be entitled to thereafter sell, exchange or transfer the Project Site Tract.

(B) Third Party Proposal. Except as provided in Section 2.6.1(A) above, in the event Agency has received from any third party (the term "third party" as used in this

Section 2.6.1(B) shall not include a Permitted Transferee) a proposal to purchase, the terms of which Agency is prepared to accept, or Agency determines to sell the Project Site Tract to a third party without having prepared terms and conditions, or in the event Agency has prepared certain terms and conditions on which Agency is prepared to sell the Project Site Tract to a third party, all such terms and conditions (if any) shall be disclosed in Agency's prior written notification of intent to sell provided to Lessee (the "Sale Notice"), and Agency shall provide Lessee with an opportunity to negotiate to purchase the Project Site Tract as set forth below:

(1) Exclusive Right of Negotiation.

Lessee shall have an exclusive right of negotiation for a period of sixty (60) days after receipt of the Sale Notice in which to accept or prepare and present its response or offer (as the case may be) to Agency, and both prior to and during that sixty (60) day period Agency shall not at any time accept any offer of a third party, negotiate with a third party or solicit offers from any third party. Agency hereby agrees that it shall not accept any offer to purchase from any third party for a price or for terms less favorable to Agency than an offer made in writing by Lessee to Agency (the "Alternative Terms") within such sixty (60) day period without first notifying Lessee of those Alternative Terms (the "Notice of Alternative Terms"). Lessee shall have a period of fifteen (15) days after receipt of Agency's Notice of Alternative Terms in which to indicate in writing its agreement to purchase the Project Site Tract on the terms stated in Agency's Notice of Alternative Terms. If Lessee does not indicate its agreement to purchase the Project Site Tract within sixty (60) days of its receipt of a Notice of Alternative Terms, if any be given, Agency thereafter shall have the right to sell and convey the Project Site Tract to a third party on the same terms or terms more favorable to Agency as those stated in the Sale Notice or the Notice of Alternative Terms.

(2) Final Offer; More Favorable Offers.

If, after following the procedures set forth immediately above, an agreement has not been reached between Agency and Lessee, Lessee, if it has not already done so, shall have ten (10) days within which to make a final offer in writing to purchase the Project Site Tract for all cash payable upon transfer of title. If, at any time during the periods described in this Section 2.6 in which Lessee may prepare and present proposals or accept proposals, as applicable, Agency receives an offer to purchase the Project Site Tract for terms more favorable to Agency than an offer made by Lessee, Agency shall be obligated to promptly provide Lessee with written notice of the terms of such offer. If Agency does not accept such "all cash" offer, the comparison as to the value of the terms to be effective with a third party shall be determined

by discounting any deferred price to be paid by the third party to a present (that is, the time that the promise to pay the deferred portion becomes effective) value and adding that present value to the cash to be paid upon transfer of the Project Site Tract. The discount rate to be used in such a calculation shall be a rate equal to three (3) points above the Federal Discount Rate charged by the Federal Reserve Bank, San Francisco, as of the date of Lessee's final all cash offer.

(3) Further Transaction. If Agency does not either (i) sell and convey the Project Site Tract within two hundred seventy (270) days of the date of the later of its first Sale Notice or its Notice of Alternative Terms or (ii) enter into a binding agreement to convey the Project Site Tract within one hundred eighty (180) days of the date of the later of its first Sale Notice or its Notice of Alternative Terms, any further transaction shall be deemed to be a new determination by Agency to sell and convey the Project Site Tract and all provisions of this Section 2.6 shall be applicable.

(4) Lessee's Certificate. If, following the expiration of all the time periods described in this Section 2.6 in which Lessee may prepare and present proposals or accept proposals, as applicable, an agreement to purchase the Project Site Tract has not been reached between Agency and Lessee, then, Lessee, upon the written request of Agency, shall provide any third party designated by Agency with a certificate stating that such time periods have elapsed and that Lessee has no further rights under this Section 2.6.

2.6.2 Purchase by Lessee. If Lessee purchases a Project Site Tract, Lessee shall pay all rent (including Annual Participation Rent as defined in Section 3.2 if the Project Site Tract purchased is the Lease Premises) and other monies then due, owing or unpaid to Agency from the owner of the Project Site Tract under its lease with the Agency up to the date title to the Project Site Tract is vested in Lessee. Neither the Minimum Base Rent nor Developer's Consideration (as referenced in the DDA) shall be prorated or refunded to Lessee. Title to the Project Site Tract shall be conveyed to Lessee in the same condition of title as existed on the date such Project Site Tract was conveyed to the original owner thereof, subject to appropriate covenants regarding use and nondiscrimination.

#### ARTICLE 3.0 DEVELOPER'S CONSIDERATION/RENT

Unless otherwise defined where first used, the capitalized terms set forth in this Article 3 are defined in Section 3.2.5 below.

### 3.1 Minimum Base Rent.

#### 3.1.1 Amount.

Lessee covenants and agrees to pay to Agency in such coin or currency of the United States as shall at the time of payment be legal tender for the payment of all debts, public or private, a minimum base rent for the Lease Premises (hereinafter referred to as "Minimum Base Rent"), over and above the other additional participation payments to be made by Lessee as hereinafter provided in this Lease, in the amount of One Dollar (\$1.00).

#### 3.1.2 Payment of Base Rent.

The Minimum Base Rent shall be paid pursuant to the provisions of Section 205 of the DDA concurrently with conveyance of the leasehold interest in the Lease Premises to Lessee.

3.2 Annual Participation Rent. In addition to the one time Minimum Base Rent paid by Lessee to Agency pursuant to Section 3.1 above, and commencing with respect to the Lease Year following the Base Year, Lessee shall be obligated to pay to Agency, at the times and in the manner hereinafter described, annual participation rent as calculated hereunder ("Annual Participation Rent"). Subject to the provisions of this Article 3, Annual Participation Rent shall be an amount equal to the greater of: (i) the Annual Participation Rent Minimum; or (ii) twenty percent (20%) of the amount by which the Annual Gross Receipts (as calculated pursuant to Section 3.2.1 below) exceed the Base Amount (as calculated pursuant to Section 3.2.2 below).

3.2.1 Calculation of Annual Gross Receipts. For purposes of calculating Annual Participation Rent hereunder, "Annual Gross Receipts" shall mean, subject to Section 3.2.3, the "Gross Operating Revenue" calculated pursuant to Section 3.2.1(A) below, excluding from Gross Operating Revenue the items described in Section 3.2.1(B) below and deducting from Gross Operating Revenue the items described in Section 3.2.1(C) below.

(A) Gross Operating Revenue. "Gross Operating Revenue" shall mean the gross operating revenues payable to Lessee in any Lease Year from the operation of the Participation Rent Area, including the aggregate of (i) all fixed, minimum and guaranteed rents, overage rentals, percentage and participation rentals payable by Project Tenants (or their subtenants) to Lessee; (ii) all rentals and receipts payable to Lessee from licenses and concessions or other space use or fee agreements such as for exhibits, vendor carts, kiosks, public telephone, food dispensing and other coin operated

machines or sales space; (iii) income payable to Lessee from food dispensing machines and all other coin operated machines directly operated by Lessee; (iv) income payable to Lessee from the sale of goods or services directly by Lessee; and (v) all other income and revenue of a nonrental nature generated from the Participation Rent Area and payable to Lessee in any Lease Year. Notwithstanding anything contained herein, no income or revenues from the Broadway Tract or Nordstrom Tract shall be included in Gross Operating Revenue under this Lease unless and until (i) Lessee has acquired fee title or a leasehold interest in such Parcel, and (ii) Lessee and Agency have entered into a written amendment to this Lease providing for the inclusion of such income or revenues in Gross Operating Revenue under this Lease in accordance with Section 13.8.2 hereof. No income or revenues from a Contiguous Parcel shall be included in Gross Operating Revenue under this Lease. The provisions set forth in Exhibit 9 attached hereto provide for an alternative rental calculation if Lessee acquires a Contiguous Parcel.

Notwithstanding the foregoing, in the event Lessee or an Affiliate of Lessee occupies any space in the Participation Rent Area for the purpose of operating a retail or other business enterprise which could otherwise be leased to a Project Tenant (other than management/leasing offices for the purpose of operating and leasing the Lease Premises and/or Arts Complex (as defined in Section 5.2.5 below)) then, in lieu of any income earned by Lessee (or such Affiliate) from such business, and in lieu of any rent payable to Lessee for the lease of such space, if any, there shall be included in Gross Operating Revenue the fair market rental value of such space.

(B) Exclusions From Gross Operating Revenue.  
Gross Operating Revenue shall specifically exclude the following receipt items:

(1) Charges to or contributions payable by Project Tenants, Contiguous Owners or the Majors for advertising and marketing charges and expenses, or pursuant to expense pass through provisions contained in Project Tenant leases, Easement Covenant and Restriction Agreements, or the separate agreements by and between Lessee and each of the Majors for real estate taxes and assessments, assessments levied against the Lease Premises pursuant to the Parking Covenants, insurance premiums, common area maintenance ("CAM") charges, CAM administrative expenses, repairs, replacements, alterations and other operating expenses related to the Participation Rent Area and/or payable for such operating expenses under any reciprocal easement agreement covering all or any portion of the Participation Rent Area; provided that such contributions are actually used by Lessee for such costs and expenses (except for the CAM administrative charge which

exclusion may not exceed fifteen percent (15%) of all such costs and expenses).

(2) Intentionally Omitted

(3) Charges to or contributions payable by Project Tenants toward the cost of Tenant Improvements installed at the expense of Lessee which are separately stated in such Project Tenant's lease. If such charges or contributions are included in the Project Tenant's lease as additional rent, such exclusion shall not exceed the actual amortized cost of such Tenant Improvements installed at the expense of Lessee (plus overhead and profit to Lessee of not more than fifteen percent (15%) of such costs) plus interest not exceeding the Reference Rate. If such charges or contributions are in the form of a tenant loan evidenced by a promissory note, the exclusion described in subsection (14) below shall apply.

(4) Charges to or contributions by Project Tenants for all costs paid or incurred by Lessee (plus overhead and profit to Lessee of not more than fifteen percent (15%) of such costs) attendant to the installation of Tenant Improvements and the provision of occupancy to Project Tenants, including but not limited to, supervision of contractors, utilities during construction, engineering of space, material storage, permits, permit assistance and plan check fees, preparation of plans and specifications, and all other so-called "key expenses," as well as all other reimbursements to Lessee by Project Tenants for funds advanced by Lessee.

(5) Revenues derived from, relating to or arising from the Onsite Appurtenant Parking, whether or not pursuant to a parking assessment or charge under leases for all or any portion of the Onsite Appurtenant Parking or otherwise, and whether or not the Onsite Appurtenant Parking is operated privately by Lessee or made a part of the Lease Premises under this Lease. The Participation Rent Area shall not include the Onsite Parking Tract.

(6) Insurance proceeds, condemnation proceeds, proceeds of any sale, conveyance or refinancing of the Lease Premises; provided, however, there shall be included in Annual Gross Receipts the proceeds payable under a policy of rental loss insurance with respect to a Project Tenant lease for the period for which it is payable unless the lease for which such rental loss proceeds are payable is terminated in connection with the event triggering the payment of rental loss proceeds, in which event Lessee may elect to include such rental loss proceeds in the year when paid or, subject to Section 3.2.1(D)(2), include such proceeds to the extent ratably amortized over what would have been the unexpired term of such terminated lease; provided further, with respect to condemnation proceeds payable with respect to "rent" for a temp-



orary taking, such rent shall be included in Annual Gross Receipts for the period for which it is payable unless the lease for which such condemnation proceeds are payable is terminated as a result of the taking, in which event Lessee may elect to include such proceeds in the year when paid or, subject to Section 3.2.1(D)(2) include such proceeds to the extent ratably amortized over what would have been the unexpired term of such terminated lease.

(7) Security deposits (and any interest thereon) not retained by Lessee as or in lieu of rent, late charges and interest payable by Project Tenants to Lessee.

(8) Merchant association dues payable by Project Tenants to Lessee on account of costs and expenses paid or incurred by Lessee in the operation or supervision thereof.

(9) Prepaid rent payable to Lessee by a Project Tenant; provided, however, such rent shall be included in Annual Gross Receipts to the extent such rent is applied to the period for which it was payable, subject to Section 3.2.1(D)(2) below.

(10) All or any portion of sublease or sub-sublease rentals which are to be retained by Project Tenants (or their subtenants) and not passed on to Lessee (or an Affiliate), regardless of who initially collects such sublease rentals.

(11) At the election of Lessee, amounts payable by Project Tenants for early termination or surrender of leases shall be included in Annual Gross Receipts in the year when paid or, subject to Section 3.2.1(D)(2), amortized ratably over a period equal to what would have been the unexpired portion of the applicable lease or sublease term; provided, however, the amount of such payment attributable to Tenant Improvements separately stated in such Project Tenant's lease shall be totally excluded from Annual Gross Receipts pursuant to subsection (3) above.

(12) Any and all settlements or awards for damages, costs of suit and attorneys' fees recovered by Lessee, or any reimbursements (plus interest and penalties) from a Project Tenant for breach of lease, including liquidated damages, or settlements or awards for loss of rent, after deducting attorneys' fees and costs incurred or damages sustained by Lessee from a Project Tenant's breach shall, at the election of Lessee, be included in Annual Gross Receipts in the year when received by Lessee or, subject to Section 3.2.1(D)(2), amortized ratably over a period equal to the unexpired portion of the applicable lease or sublease term.

(13) Any and all monies received by Lessee on account of overpayments and protests to and reassessments by governmental entities for real estate taxes and assessments.

(14) Reimbursements and repayments to Lessee for monies advanced by Lessee or loans made by Lessee to Project Tenants or to Agency for any and all costs and expenses. Loans to Project Tenants shall be evidenced by promissory notes and there shall be no limit to the interest charged thereon which is to be excluded from Annual Gross Receipts.

(15) Any and all charges, fees and receipts paid or payable to Lessee and attributable to the Arts Complex and other common areas of the Participation Rent Area used for any purpose related to a public-oriented community activity.

(16) Monies collected on account of taxes, licenses, and other fees and charges required to be collected by Lessee and paid over to the appropriate taxing or other governmental authorities.

(17) Monies collected by Lessee from Project Tenants on account of reasonable reserves for capital replacements or improvements (other than amounts collected by Lessee and described in subsection (1) above) where: (i) the Project Tenant lease does not separately require amortization or expense reimbursements for such capital improvements; and (ii) the reserves collected by Lessee are maintained in a separate bank account, expended on account of a capital replacement or improvement, and/or returned to Project Tenants in accordance with Project Tenants' leases. Reserves collected by Lessee which are not deposited in such account (commingled with Lessee's funds) or are expended for purposes other than as provided in this subsection (17), shall be included in Annual Gross Receipts for the Lease Year in which commingled or expended. Lessee shall provide, in the Annual Statement, an accounting of the capital reserves collected from Project Tenants, expenditures from the capital reserves made during the prior Lease Year and Lessee's projected uses of such capital reserves for future Lease Years.

(18) Receipts received or derived by Lessee from the ownership or operation of parcels of property not specifically included within the Participation Rent Area (whether or not such parcels are contiguous to the Participation Rent Area).

(19) Any and all other items of income and revenue paid or payable to Lessee all of which are described in Exhibit "6" hereto.

(C) Deductions from Gross Operating Revenue.  
There shall be deducted from Gross Operating Revenue (after taking into account the exclusions described in subsection (B) above) or the applicable portion thereof, to determine Annual Gross Receipts, the following expense items:

(1) Contributions payable by Lessee with respect to marketing costs (not reimbursed by Project Tenants) which are contractually required to be paid by Lessee under Project Tenant leases.

(2) The amount by which the annual rentals payable by Lessee to the owner of the parcels described on Exhibit "3" (referred to herein as the "Ott and Parma Rehabilitation Parcels") for any Lease Year (including all fixed, minimum and guaranteed rents plus estimated participation, percentage, overage or stepped rentals) with respect to Lessee's lease of the Ott and Parma Rehabilitation Parcels exceed the amount of annual rentals payable by Lessee to such owner for the Base Year; provided, however, that such deduction shall not exceed the amount by which the Gross Operating Revenues generated from the Ott and Parma Rehabilitation Parcels for such Lease Year exceed the portion of the Base Amount attributable to such Parcels; provided further that the foregoing provisions shall not apply if the Ott and Parma Rehabilitation Parcels are not incorporated into the Retail Center pursuant to the DDA.

(3) To the extent any income is included in Annual Gross Receipts earned by Lessee from a business or enterprise operated by Lessee in the Participation Rent Area there shall be deducted from such income the Cost of Goods Sold attributable to such income but such deduction shall not exceed, in any Lease Year, five percent (5%) of the Gross Operating Revenues for such Lease Year.

(D) Limitation on Certain Exclusions and Deductions.

(1) The exclusions for advertising and marketing charges, merchant association dues and reserves for capital replacements or improvements collected from Project Tenants (described in Sections 3.2.1(B)(1), 3.2.1(B)(8) and 3.2.1(B)(17)) and the deduction for contributions made by Lessee to marketing costs (described in Section 3.2.1(C)(1)) shall be disallowed in any Lease Year to the extent, but only to the extent: (i) the Agency demonstrates that, with respect to each or any Project Tenant lease, the provision in said lease setting forth the amount and nature of the charge to the Project Tenant for advertising, marketing, merchant association dues or capital reserves, or the requirement that Lessee contribute to marketing costs was not customary to shopping center leases or shopping center industry practice at the time

the Project Tenant lease was executed; or (ii) the aggregate of all such exclusions and deductions exceed five percent (5%) of Gross Operating Revenue for such Lease Year.

(2) In the event Lessee elects to include in Annual Gross Receipts the exclusions described in Sections 3.2.1(B)(6), 3.2.1(B)(9), 3.2.1(B)(11) and 3.2.1(B)(12) over an amortized period rather than the Lease Year when paid to Lessee, then Lessee shall deposit twenty percent (20%) of each amount so amortized in an interest bearing account of Lessee's choice as security for the Annual Participation Rent, if any, payable to the Agency in subsequent Lease Years attributable to the amortized receipts. During each subsequent Lease Year such fund shall be used to pay the Annual Participation Rent, if any, due Agency with respect to such amortized receipts. To the extent that Annual Participation Rent attributable to the amortized receipts is less than twenty percent (20%) of the portion of such amortized receipts included in Annual Gross Receipts for any Lease Year, the difference shall be released from the account and paid over to Lessee. Agency and Lessee each shall be entitled, respectively, to the interest earned on the amounts paid from the account.

(3) If Lessee uses its own employees or personnel or a contractor affiliated with Lessee to perform any of the services described above for which Project Tenant contributions or reimbursements are to be excluded from Annual Gross Receipts, then for the purpose of determining the contributions or reimbursements which are excludable from Annual Gross Receipts, such services shall be deemed not to exceed costs and expenses Lessee would have paid to an independent third party for such services at reasonably competitive rates.

(E) Interest. Whenever interest is to be added to any receipts for inclusion in Annual Gross Receipts, such interest shall accrue on such receipts or any portion thereof from date of receipt by Lessee until such receipts or such portion thereof are included in Annual Gross Receipts or used by Lessee in calculating estimated quarterly payments of Annual Participation Rent, unless otherwise specifically provided.

3.2.2 Calculation of Base Amount. The Base Amount shall be based upon the Annual Gross Receipts in the Establishment Year calculated pursuant to Section 3.2.1 above, and adjusted pursuant to Section 3.2.2(A) below to arrive at the Adjusted Gross Receipts for the Establishment Year. The Adjusted Gross Receipts shall be subject to further adjustment in the Establishment Year for limited inflation occurring between the end of the Base Year and the end of the Establishment Year pursuant to Section 3.2.2(B). The Base Amount shall be subject to adjustment in years subsequent to the Establishment Year pursuant to Section 3.2.2(C) below.

The adjustments to the Establishment Year Annual Gross Receipts described in this Section 3.2.2 shall only apply to the calculation of the Base Amount.

(A) Calculation of Adjusted Gross Receipts. The Base Amount shall be based upon the Adjusted Gross Receipts payable to Lessee for the Establishment Year, which are the Annual Gross Receipts for such year, adjusted and projected as described in this Section 3.2.2(A). Adjusted Gross Receipts are the sum of: (i) the annual minimum rents payable on all space within the Participation Rent Area, annualized pursuant to subsection (1) below and projected to one hundred percent (100%) occupancy at market rents pursuant to subsections (2) and (3) below; (ii) the annualized overage, percentage, participation or stepped rentals which accrue to or are payable to the Lessee with respect to the Establishment Year, regardless of when such overage, percentage, participation or stepped rentals are paid to or received by Lessee, as projected to one hundred percent (100%) occupancy at market rents pursuant to subsections (2) and (3) below and adjusted pursuant to subsection (4) below; and (iii) all other revenue or receipts payable to Lessee which are otherwise includable in Annual Gross Receipts and generated from all other income centers on the Participation Rent Area, subject to adjustment pursuant to subsections (5) and (6) below.

(1) Annualizing Certain Leases. In the event that, during the Establishment Year, a rent abatement, inducement, or concession is in effect for any Project Tenant lease, or if any Project Tenant lease has not been in effect for the entire Establishment Year, then for purposes of calculating the Adjusted Gross Receipts, the first full month's rent (after all rent abatements, inducements or concessions have expired) payable by such Project Tenant within the first eighteen (18) months of such lease shall be annualized for such space and included in the Adjusted Gross Receipts for the Establishment Year. If no rent is payable by a Project Tenant within the first eighteen (18) months of such Project Tenant's lease, the space occupied by such Project Tenant shall be deemed vacant space and the "deemed annual rentals" for such space, calculated pursuant to subsection (3) below, shall be added to the Adjusted Gross Receipts for the Establishment Year in lieu of actual rentals from such space.

(2) Relocation Tenants and Below Market Leases. For purposes of calculating the Adjusted Gross Receipts, the actual rent generated from all space within the Participation Rent Area which is leased: (a) to the relocation tenants described on Exhibit "9" hereto who occupied space in the Participation Rent Area during the Establishment Year; and/or (b) to local tenants described in Exhibit "7" who occupied space in the Participation Rent Area during the

Establishment Year pursuant to the Relocation and Local Tenant Preference Plan approved by Agency, shall be excluded from Adjusted Gross Receipts for the Establishment Year. All such space described herein shall be deemed vacant space and the "deemed annual rentals" for such space, calculated pursuant to subsection (3) below, shall be added to the Adjusted Gross Receipts for the Establishment Year. However, Lessee's right to project average annual rentals in lieu of actual rentals for Local Tenants shall apply to Local Tenants occupying up to 25% of the gross leasable area of the Participation Rent Area. Any increase in such percentage of gross leasable area shall be subject to the approval of Agency.

(3) Vacant Space. For purposes of calculating Adjusted Gross Receipts, the Participation Rent Area shall be projected to one hundred percent (100%) occupancy by adding to the Establishment Year Adjusted Gross Receipts the "deemed annual rentals" for all space vacant in the Establishment Year and all space deemed vacant pursuant to subsections (1) and (2) above. The "deemed annual rentals" for retail space shall be the product obtained by multiplying (a) the average annual rentals per square foot, i.e. the annual Adjusted Gross Receipts, including all base and minimum rent, overage, percentage, stepped and participation rentals, attributable to the leased retail space within the Participation Rent Area, exclusive of the Major Tracts, State Street Retail Rehabilitation Space (as defined below), Rehabilitation Office Space (as defined below) and actual or deemed vacant space, divided by the rentable square footage of such leased space; by (b) the rentable square footage of such actual or deemed vacant space. If the Ott and Parma Rehabilitation Parcels are included within the Retail Center, leased space in that portion of the retail space located in the Ott and Parma Rehabilitation Parcels fronting on State Street ("State Street Retail Rehabilitation Space") and leased office space in the Ott and Parma Rehabilitation Parcels ("Rehabilitation Office Space") shall be excluded from the foregoing calculation. "Deemed annual rentals" for vacant space or deemed vacant space in the State Street Retail Rehabilitation Space shall be determined by multiplying (a) the average annual rentals per square foot, including all base and minimum rent, overage, percentage, stepped and participation rentals attributable to the leased space within the State Street Retail Rehabilitation Space, exclusive of actual or deemed vacant space, divided by the rentable square footage of such leased space; by (b) the rentable square footage of such actual or deemed vacant space; provided, however, if all of the State Street Retail Rehabilitation Space is vacant, "deemed annual rentals" for such space shall be equal to the average annual rentals per square foot for comparable retail space located on State Street within a five (5) block radius from the Retail Center multiplied by the rentable square footage of the State Street Retail Rehabilitation Space. "Deemed annual rentals" for vacant space or

deemed vacant space in the Rehabilitation Office Space shall be determined by multiplying (a) the average annual rentals per square foot, including all fixed, minimum and guaranteed rents, plus escalations thereof, less an amount to be reasonably determined by Lessee as representing real estate taxes and assessments, insurance premiums and common area maintenance charges and administrative expense and other operating expenses attributable to leased space within the Rehabilitation Office Space, exclusive of actual or deemed vacant space, divided by the rentable square footage of such leased space, by (b) the rentable square footage of such actual or deemed vacant space; provided, however, if all of the Rehabilitation Office Space is vacant, "deemed annual rentals" shall be equal to the average annual rentals per square foot for comparable office space located on State Street within a five (5) block radius from the Retail Center multiplied by the rentable square footage of the Rehabilitation Office Space.

(4) Participation and Other Rent Adjustment. The overage, percentage, or participation rentals payable under Project Tenant leases may be payable to Lessee in arrears and may be subject to year end adjustments. In the event such rentals are payable or adjusted in the Lease Year following the Establishment Year but for all or a portion of the Establishment Year, such rentals when calculated, adjusted and payable by Project Tenants to Lessee shall be included in the Adjusted Gross Receipts for the Establishment Year. If only a portion of the period upon which such rentals are calculated falls within the Establishment Year, then the pro rata portion thereof shall be included in the Adjusted Gross Receipts in the Establishment Year.

(B) Initial Adjustments to Adjusted Gross Receipts for Inflation. After the Adjusted Gross Receipts for the Establishment Year have been established pursuant to Section 3.2.2(A) above, the Adjusted Gross Receipts shall be further adjusted for limited inflation occurring between the Base Year and the Establishment Year in the following manner to arrive at the Base Amount. The Adjusted Gross Receipts in the Establishment Year shall be reduced by an amount equal to the percentage increase, if any, in the Consumer Price Index which occurred between the end of the Base Year and the end of the Establishment Year; provided, however, that except as hereinafter provided, the annual percentage increase in the Consumer Price Index for such Lease Years shall be deemed not to exceed the average annual increase in the Consumer Price Index over the five (5) calendar year period prior to the year in which the first Major opens for business plus 2% and shall be deemed not to be less than such five year average annual increase minus 2%. That portion of the Adjusted Gross Receipts representing percentage rental payments shall be reduced by the actual increase in the Consumer Price Index for such Lease Years without any deemed minimum or maximum annual increase.



Notwithstanding the foregoing, in no event shall the Adjusted Gross Receipts be reduced below the average annual rentals per square foot actually payable by Project Tenants during the Base Year projected to 100% occupancy calculated in the same manner as paragraph (A)(3) above.

The Adjusted Gross Receipts, as reduced for limited inflation as provided above, shall be the Base Amount (subject to future adjustments as hereinafter provided) for determining the Annual Participation Rent payable by Lessee in each Lease Year after the Base Year.

(C) Subsequent Adjustments to Base Amount. At any time after the Establishment Year, the Base Amount shall be subject to adjustment with respect to, and shall continue after, for the respective periods set forth below, any Lease Year in which any of the following occur:

(1) Special Capital Expenditures.

(a) Certain Special Capital Expenditures. In the event of the occurrence of a Special Capital Expenditure resulting from: (i) improvements required by any local governmental entity having jurisdiction thereof; or (ii) a Rehabilitation which Lessee is permitted to undertake under the terms of this Lease and for which Lessee is not directly reimbursed by Project Tenants, then the Base Amount shall be increased, without the prior approval of Agency, to an amount and for a period equal to the Special Capital Expenditure Debt Service attributable to such Special Capital Expenditure commencing in the Lease Year following the Special Capital Expenditure; provided, however, that the adjustment in the Base Amount resulting from a Special Capital Expenditure shall not, in any Lease Year, cause the Annual Participation Rent to fall below an amount equal to the Annual Participation Rent payable for the Lease Year in which such Special Capital Expenditure was made, increased in each subsequent Lease Year by an amount equal to the average annual percentage increase, if any, in the Annual Participation Rent payable by Lessee to Agency during the five (5) year period immediately prior to and including the Lease Year in which the Special Capital Expenditure was made. In any Lease Year in which Annual Participation Rent falls below such amount or to the extent, but only to the extent, such adjustment to the Base Amount, in any Lease Year, would cause Annual Participation Rent to fall below such amount, the adjustment to the Base Amount, or portion thereof as necessary, shall be disregarded.

(b) Subsequent Tenant Improvements. The Base Amount shall be increased, subject to the prior consent of Agency, as a result of any tenant improvements which are made to any space previously improved and occupied by a



Project Tenant repayment for which is not separately stated in the new Project Tenant lease, by the annual debt service (principal and interest) on such tenant improvement costs, which shall be equal to the actual annual debt service if financed, or using an interest rate equal to the Reference Rate plus three percent (3%) if not financed, and for a period equal to the amortization of such costs over the term of the applicable new Project Tenant lease (exclusive of option terms).

(c) Uninsured Casualty. In the event of an Uninsured Casualty (as defined below), including an Uninsured Casualty to the Onsite Appurtenant Parking that Lessee is required to repair or restore pursuant to the REA, the Base Amount shall be increased for a period of thirty (30) years, commencing with the Lease Year following the completion of the Restoration (as defined in Section 7.6.2(B)), by an amount equal to the Special Capital Expenditure Debt Service (as defined in Section 3.2.5(P) below) whether or not Lessee has obtained a loan for the costs of such Restoration or has financed the cost of Restoration with its own funds. The increase in the Base Amount shall be effective only if the cost of Restoration exceeds ten percent (10%) of the Annual Gross Receipts received by Lessee in the Lease Year prior to the Lease Year in which the Uninsured Casualty occurs. If the cost of restoration does not exceed ten percent (10%) of the Annual Gross Receipts received in the Lease Year prior to the Lease Year in which the Uninsured Casualty occurred, there shall be no adjustment to the Base Amount. For purposes of this Section 3.2.2(C)(1)(c), "Uninsured Casualty" shall mean a casualty against which Lessee is not required to insure or a casualty where there are insufficient proceeds for Restoration under circumstances in which the insurance carried by Lessee nevertheless complies with the requirements of this Lease.

(2) Income Centers Not Yet in Service. Prior to the end of the Base Year, Lessee shall provide Agency with a schedule of income centers, including kiosks, show-cases, food and other vendors, etc., which spaces are intended to be included within the Participation Rent Area but which are not anticipated to be fully operable by the end of the Establishment Year. The schedule shall also state Lessee's projection of the Gross Operating Revenue which Lessee anticipates it will receive from such income centers, as well as the back up material supporting the conclusions reached in the schedule. Unless objected to in writing by Agency within twenty (20) days from the date of submission, the scheduled Gross Operating Revenue listed for each income center shall be included in the Base Amount in the Lease Year in which such income center is first leased and put into service but only to the extent of the actual Gross Operating Revenue from such lease during such First Lease Year.

(3) Changes in Leasing Method. In the event of a change in leasing method with respect to the leasing of the Participation Rent Area to individual Project Tenants by Lessee from triple net leasing to full service leasing or modified full service leasing, or which would otherwise materially affect the Annual Participation Rent payable to Agency, then the Base Amount shall be adjusted each such time a change occurs so that Agency's Annual Participation Rent shall not be affected, either up or down, as a result of changes in the method of leasing.

3.2.3 Method of Accounting. For purposes of calculating Annual Gross Receipts, and each element related thereto (except as specifically stated in this Lease with respect to the calculation of Adjusted Gross Receipts to arrive at the Base Amount, as set forth in Section 3.2.2(A), the adjustments to Base Amount, as set forth in Section 3.2.2(B) and 3.2.2(C), the calculation of Net Cash Flow After Debt Service in accordance with Section 3.2.5, and those items described in Section 3.2.1(B) (paragraphs (6), (11) and (12)), Lessee shall employ the accrual basis of accounting in accordance with generally accepted accounting principles consistently applied; provided, however, that if any obligation which would be included in Annual Gross Receipts for purposes of calculating Annual Participation Rent hereunder is not paid to Lessee within ninety (90) days of the date such obligation is due and accrued, then, in lieu of a bad debt reserve, Lessee shall have the right to exclude such obligation from Annual Gross Receipts. Thereafter, Lessee shall include in Annual Gross Receipts any amount collected on such obligation (reduced by all costs and expenses, including reasonable attorneys' fees incurred by Lessee in enforcing the collection of such bad debt) in Annual Gross Receipts for the Lease Year in which payment is received by Lessee.

3.2.4 Payment of Annual Participation Rent.

(A) Estimated Quarterly Payments. Annual Participation Rent, if any, shall be paid by Lessee to Agency in estimated quarterly installments for each Lease Year after the Base Year as follows:

(1) Participation Rent Prior to the End of the Establishment Year. With respect to the Annual Participation Rent, if any, due to Agency for Lease Years prior to and including the Establishment Year, Lessee shall make quarterly estimated payments, in arrears on the date which is fifteen (15) days after the end of each calendar quarter, in an amount equal to one-quarter of the Annual Participation Rent Minimum. If, after the Base Amount has been determined following the Establishment Year, there is due to Agency any additional Annual Participation Rent above the Annual Participation Rent Minimum for Lease Years prior to and including the Establish-

ment Year, then the total amount so due shall be payable in four quarterly payments (concurrent with the payments due under subsection (2) below) beginning not later than six (6) months after the end of the Establishment Year.

(2) Participation Rent After the Establishment Year. Beginning on the date which is fifteen (15) days after the end of the first calendar quarter in the Lease Year following the Establishment Year and on the date which is fifteen (15) days after the end of each calendar quarter thereafter, Lessee shall estimate and pay to the Agency a sum equal to Lessee's estimate of one-quarter of the Annual Participation Rent; provided, however, that Lessee may revise its estimate of the Annual Participation Rent after each calendar quarter based on actual Annual Gross Receipts and Lessee's reasonable projections, and Lessee may revise its quarterly payment based thereon and take into consideration payments of estimated Annual Participation Rent previously made for such Lease Year.

(B) Annual Statement of Annual Participation Rent.

(1) Establishment Year Annual Statement. Within one hundred twenty (120) days after the close of the Establishment Year, Lessee shall submit to Agency an accounting statement which sets forth Lessee's computation of the Establishment Year Annual Gross Receipts, Adjusted Gross Receipts, Base Amount, and Lessee's computation of the Annual Participation Rent, if any, due Agency for the Lease Year following the Base Year and for the Establishment Year (the "Establishment Year Annual Statement"). The Establishment Year Annual Statement shall also state the amount of any additional Annual Participation Rent due but unpaid or overpaid for the Lease Year following the Base Year, and/or the Establishment Year. Unless Agency notifies Lessee in writing of its intent to audit the Establishment Year Annual Statement within ninety (90) days after Lessee's submission thereof in accordance with Section 3.2.4(E)(2), Lessee's determination of the Base Amount, and each element thereof, shall be conclusively presumed to be correct and shall be the Base Amount (subject to subsequent adjustment only) for calculation of Annual Participation Rent in each Lease Year after the Base Year.

(2) Regular Annual Statements. Within one hundred twenty (120) days after the close of each Lease Year after the Base Year, and each Lease Year thereafter, Lessee shall submit to Agency a detailed annual accounting statement setting forth the Annual Gross Receipts for the entire Lease Year, Base Amount and adjustments to Base Amount (for Lease Years after the Establishment Year), Net Cash Flow After Debt Service if the Annual Participation Rent Minimum applies, and

(beginning with the Establishment Year accounting) Lessee's computation of the Annual Participation Rent, if any, due Agency for such Lease Year, and Lessee's computation of the amount of any such additional Annual Participation Rent due but unpaid or overpaid pursuant to the terms hereof (the "Annual Statement").

(3) Delay in Providing Statement. If, for any Lease Year, Lessee fails to provide Agency with the Establishment Year Annual Statement or an Annual Statement, as applicable, within the time period specified above, Lessee shall pay to Agency on account of Annual Participation Rent for such Lease Year, within one hundred fifty (150) days after the end of such Lease Year, an amount equal to (i) eighty percent (80%) of the Annual Participation Rent payable to Agency in the Lease Year immediately prior to such Lease Year, less (ii) the aggregate amount paid to Agency on account of estimated quarterly Annual Participation Rent pursuant to Section 3.2.4(A) for such Lease Year. Any amount paid by Lessee on account of Annual Participation Rent pursuant to this Section 3.2.4(B)(3) shall be adjusted pursuant to Section 3.2.4(C) below within thirty (30) days after Lessee delivers the required Annual Statement. Any amount paid by Lessee on account of Annual Participation Rent pursuant to this Section 3.2.4(B)(3) shall not relieve Lessee of its obligation to provide Agency with the Establishment Year Annual Statement or an Annual Statement, as applicable, or to make full payment of Annual Participation Rent within the time set forth in this Lease.

(C) Adjustment of Annual Participation Rent at Year End. If, for any Lease Year, the aggregate amount paid to Agency on account of estimated quarterly Annual Participation Rent pursuant to Section 3.2.4(A) above (including any amounts paid by Lessee pursuant to Section 3.2.4(B)(3) above) shall be more or less than the Annual Participation Rent for such Lease Year as reflected in the Annual Statement referred to in Section 3.2.4(B) for such Lease Year, then within one hundred fifty (150) days after the end of the applicable Lease Year (or, if Lessee fails to timely provide Agency with an Annual Statement, within thirty (30) days after Lessee delivers the required Annual Statement): (i) Lessee shall pay to Agency the amount of any underpayment in Annual Participation Rent as reflected in the Annual Statement, plus, if such underpayment exceeds ten percent (10%) of the Annual Participation Rent payable to Agency for the applicable Lease Year, interest accrued thereon at the Reference Rate from the January 15 immediately following the applicable Lease Year until paid; or (ii) Agency shall pay to Lessee the amount of any overpayment of Annual Participation Rent as reflected in the Annual Statement. In the event Lessee fails to pay to Agency the amount set forth in (i) of the foregoing sentence within one hundred fifty (150) days after the end of the

applicable Lease Year such amount shall thereafter bear interest at the Reference Rate plus three percent (3%) per annum from the one hundred fifty-first (151st) day after the end of the applicable Lease Year until paid. In addition to Lessee's rights to demand payment of any such overpayment from Agency, Lessee shall have the right to set off any such amounts from the installments of Annual Participation Rent next becoming due under the terms of this Lease.

(D) Net Leases. Agency and Lessee agree that Annual Participation Rent, and all other sums of whatever kind and nature relating to the Lease Premises and payable hereunder to or on behalf of Agency, shall be absolutely net to Agency, and shall be paid without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension, deduction or defense except as otherwise expressly provided by the terms of this Lease.

(E) Right of Inspection and Audit of Records.

(1) Records; Right of Inspection. Lessee shall keep full and accurate books and accounts, records, cash receipts, and other pertinent data showing the financial operations of the Lease Premises and directly related to the preparation of any Annual Statement submitted by Lessee under Section 3.2.4(B) ("Records"). Such Records shall be kept for a period of three (3) years after the end of the Lease Year to which such Records pertain. Agency shall be entitled, not more than one (1) time per calendar year during each Lease Year and once within three (3) years after receipt by Agency of the applicable Annual Statement, to inspect, examine and copy, at Agency's sole expense, the Records and Lessee's income tax returns (subject to Section 3.2.4(E)(2)(f)), pertaining to the applicable Lease Year as is necessary or appropriate for the purpose of this Lease, provided that such inspection, examination and copying shall be upon three (3) days' prior written notice to Lessee. Such inspection, examination and copying shall be made at such time and place as Lessee may reasonably designate. Any transfer of Records for such inspection, examination and copying shall be at Agency's sole expense. Lessee shall cooperate fully with Agency in making the inspection.

(2) Right to Audit. In the event of a dispute between Agency and Lessee regarding the calculations of Annual Participation Rent reflected in the Establishment Year Annual Statement or any Annual Statement, Agency or its designated agent shall have the right to audit the Records for the purpose of verifying the Annual Participation Rent

reflected in such Annual Statement subject to the following terms and conditions:

(a) Agency shall have the right to make such audit, not more than once for any Lease Year: (i) within ninety (90) days following its receipt of the Establishment Year Annual Statement; or (ii) within two (2) years after receipt by Agency of the Annual Statement for any other Lease Year;

(b) Agency shall give Lessee at least fifteen (15) days' written notice of its desire to conduct such audit, and such audit shall be made at such time and place as Lessee may reasonably designate;

(c) Such audit shall be limited to the Records and Lessee's income tax returns (subject to Section 3.2.4(E)(2)(f)) relevant to the calculation and payment of Annual Participation Rent;

(d) Such audit shall be performed by an independent certified public accountant or by Agency's or City's in-house auditor (the "Auditor");

(e) Agency shall provide Lessee with a copy of the audit report prepared by the Auditor promptly after Agency's receipt thereof. Agency shall also provide Lessee with a copy of the internal findings of the Auditor promptly after the preparation of such findings; and

(f) Agency hereby covenants, warrants and represents that neither Agency nor Agency's designated agent (including the Auditor) shall disclose or use the information contained in the Records and, if applicable, Lessee's tax returns for any purpose other than for audit purposes or enforcement of Agency's rights as permitted under this Lease. To the extent permitted by law, Agency, its agents and/or its Auditor(s) shall keep such Records and tax returns, or copies thereof, confidential and shall take all steps reasonably necessary to assert and enforce such confidentiality without prejudice to Agency's rights under this Lease. Notwithstanding any other provision of this Lease, Lessee shall not be obligated to provide Agency with copies of its income tax returns unless (i) such tax returns shall remain confidential and not available to the public; and (ii) Lessee is a partnership and the principal asset of such partnership is this Lease (and interest in the Lease Premises described herein); and (iii) Lessee has no substantial assets, business or income unrelated to its activity in the Lease Premises.

(3) Waiver. If Agency has not performed an audit for a particular Lease Year within the time periods specified in Section 3.2.4(E)(2)(a), then Agency shall be

deemed to have waived its right to audit the Records for such Lease Year, or to any adjustment of the Annual Participation Rent for such Lease Year, and the facts contained in the Annual Statement for such Lease Year shall be conclusive and binding upon Agency.

(4) Result of Audit/Lessee Challenge.  
Within twenty (20) days following any audit performed by Agency, Agency shall provide Lessee with an audit report setting forth the Auditor's findings in reasonable detail, including any schedules or attachments necessary to interpret such findings (the "Audit Report"). The Audit Report shall be accompanied by Agency's written demand for payment (pursuant to Subsection (5) below) if an underpayment is disclosed by the Audit Report.

Lessee shall have a period of thirty (30) days following its receipt of the Audit Report in which to review the Audit Report, interview the Auditor (who shall be made reasonably available to Lessee during such period) and, if Lessee reasonably determines based upon its review of the Audit Report to dispute the results of any audit conducted by Agency, provide Agency with written objections stating in reasonable detail Lessee's specific objections to the Audit Report. For a period of thirty (30) days following the delivery of Lessee's challenge to Agency, Lessee and Agency shall negotiate in good faith in order to resolve any dispute concerning the Audit Report. If resolved, any underpayment or overpayment, as the case may be, shall become due and payable by Lessee or Agency, as applicable, within thirty (30) days following such resolution in accordance with Subsections (5) and (6) below. If Lessee and Agency fail to resolve each issue in dispute concerning the results of an audit within ninety (90) days following Lessee's receipt of the Audit Report, either party may seek resolution of such disputed issues by judicial action (legal or equitable) in a court having jurisdiction thereof. In such event, neither Agency nor Lessee shall be in default with respect to such underpayment or overpayment and the payment of any sums shown to be owing to Agency or Lessee by such audit, including, without limitation, any underpayment or overpayment of the Annual Participation Rent, shall be payable in accordance with Subsections (5) and (6) below, as applicable.

(5) Underpayment. In the event an unchallenged audit (including an audit, or portion thereof, which is disputed but then such dispute is resolved) or final judicial determination, as the case may be, discloses an underpayment of Annual Participation Rent, Lessee shall pay the amount of such underpayment (or the undisputed portion thereof) within thirty (30) days after the later of the date (a) Lessee receives the Audit Report and Agency's written demand to pay such underpayment; (b) a disputed audit, or the applicable



portion thereof, is resolved; or (c) a final judicial determination of a disputed audit is rendered that discloses such underpayment ("Underpayment Determination Date"). Interest shall accrue at the Reference Rate plus three percent (3%) per annum on the amount of such underpayment from the one hundred fifty-first (151st) day after the end of the applicable Lease Year in which the underpayment was due until paid. In the event such underpayment exceeds the greater of three percent (3%) of the amount of Annual Participation Rent actually owing for the applicable Lease Year or Ten Thousand Dollars (\$10,000), then Lessee shall reimburse Agency for all reasonable costs and expenses incurred by Agency in connection with any audit and/or judicial action. Except as set forth in the preceding sentence, Agency shall pay its own cost of any audit and/or judicial action. In no event shall the failure by Lessee to pay such underpayment at the time it would have otherwise been due under this Lease constitute a Default in the payment of rent under this Lease, provided the amount of such underpayment is paid within such thirty (30) day period after the Underpayment Determination Date, nor shall Lessee be subject to any fee, penalty or liquidated damages on account of such underpayment. Failure by Lessee to pay such underpayment within such thirty (30) day period after the Underpayment Determination Date shall constitute an Event of Default under Section 13.3.1(B).

(6) Overpayment. In the event an unchallenged audit (including an audit, or portion thereof, which is disputed but then resolved) or final judicial determination, as the case may be, discloses an overpayment of Annual Participation Rent, Agency shall pay the amount of such overpayment (or the undisputed portion thereof) within thirty (30) days after the later of the date (a) Lessee receives the Audit Report disclosing such overpayment; (b) a disputed audit, or the applicable portion thereof, is resolved; or (c) a final judicial determination of a disputed audit is rendered that discloses such overpayment ("Overpayment Determination Date"). Interest shall accrue at the Reference Rate on the amount due but unpaid as of the Overpayment Determination Date. If not paid by Agency within such thirty (30) day period, Lessee may, at its election, deduct the amount of such overpayment (plus interest thereon) from the installments of Annual Participation Rent and other sums next becoming due to Agency under this Lease until all of such overpayment (plus interest thereon) is paid in full.

### 3.2.5 Definitions Applicable to the Calculation and Payment of Participation Rent.

For purposes of the Annual Participation Rent provisions, the following definitions shall apply:



(A) Affiliate. "Affiliate" shall mean a JMB Entity or a Reininga Entity (both as defined in Section 8.2.1(D)).

(B) Annual Participation Rent Minimum. The "Annual Participation Rent Minimum" shall be the lesser of Two Hundred Thousand Dollars (\$200,000.00) or Net Cash Flow After Debt Service for the applicable Lease Year received by Lessee from the operation of the Participation Rent Area.

(C) Base Amount. The "Base Amount" shall mean the actual, projected and adjusted Annual Gross Receipts in the Establishment Year calculated in accordance with Section 3.2.2 above.

(D) Base Year. The "Base Year" shall mean the earlier of: (i) the first full calendar year following the calendar year in which the Participation Rent Area is operating at the annual average rate of occupancy, on a gross leasable square footage of retail space basis, greater or equal to sixty percent (60%); or (ii) the first full calendar year in which the Participation Rent Area is first operating at any time during said year at the actual rate of occupancy, on a gross leasable square footage of retail space basis, greater or equal to eighty percent (80%); or (iii) three (3) full calendar years after the calendar year in which a Certificate of Completion has been issued for all of the Mall Stores in accordance with Section 4.9 hereof. As used herein, "occupancy" shall be determined by a Project Tenant's physical possession of the premises or entitlement thereto described in such Project Tenant lease, whether or not the payment of rentals has commenced thereunder.

(E) Consumer Price Index. The Consumer Price Index shall mean, for each applicable Lease Year, the Revised United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for the United States Average, All Urban Consumers (1967=100). If the Consumer Price Index does not exist at the time the Base Amount is established hereunder, Agency, subject to Lessee's reasonable consent, shall substitute any official index published by the Bureau of Labor Statistics, or its successor or similar governmental agency, comparable to the Consumer Price Index and applicable to the Santa Barbara area.

(F) Cost of Goods Sold. The "Cost of Goods Sold" shall mean the cost of goods sold as generally used in the industry relating to the relevant business.

(G) Establishment Year. The "Establishment Year" shall mean the second full calendar year following the Base Year.

(H) Local Tenants. The "Local Tenants" shall mean those certain tenants more particularly described in that certain Relocation and Local Tenant Preference Plan proposed by Lessee and approved by Agency in accordance with the DDA.

(I) Net Cash Flow After Debt Service. "Net Cash Flow After Debt Service" for any Lease Year shall mean the Annual Gross Receipts (which never include receipts generated by the Appurtenant Parking) on a cash basis for that Lease Year from the operation of the Participation Rent Area, less the sum of: (i) normal and/or necessary operating expenses of the Participation Rent Area including, without limitation, repairs, maintenance, management, promotion, security, utilities, taxes, insurance, legal and accounting costs, commissions, rent paid or payable by Lessee on the Ott and Parma Rehabilitation Parcels, and all other costs and expenses related to the Participation Rent Area, the Arts Complex, common areas, and the Ott and Parma Rehabilitation Parcels (to the extent such parcels are included in the Retail Center in that Lease Year), fairly stated and computed on a cash basis, to the extent such operating expenses have not been actually reimbursed by Project Tenants pursuant to expense pass-through provisions in Project Tenant leases; (ii) the Participation Rent Debt Service; and (iii) any Special Capital Expenditure Debt Service resulting from an Uninsured Casualty.

(J) Participation Rent Area. The "Participation Rent Area" shall mean: (i) all of the Lease Premises; and (ii) the Ott and Parma Rehabilitation Parcels to the extent all or any portion of such parcels are acquired by Lessee and are included within the Retail Center pursuant to the DDA. The Onsite Appurtenant Parking shall not be included in the Participation Rent Area whether or not Lessee acquires such Onsite Appurtenant Parking during the Lease Term. No other parcel shall be included in the Participation Rent Area. The provisions set forth in Exhibit 9 attached hereto provide for an alternative rental calculation if Lessee acquires a Contiguous Parcel.

(K) Participation Rent Debt Service. The "Participation Rent Debt Service" shall mean an amount equal to the annual debt service on ninety-five percent (95%) of the Project Costs (as defined in Attachment 12 to the DDA) amortized in level monthly payments over a thirty (30) year term at the rate of interest equal to ten percent (10%).

(L) Project Tenant. "Project Tenant" shall mean any tenant under a lease for any portion of the Participation Rent Area, between Lessee as landlord and such tenant as lessee.

(M) Reference Rate. The "Reference Rate" shall mean the then current annual yield paid on promissory notes issued by the United States Department of the Treasury having a maturity equal to five (5) years as such interest rate is reported in The Federal Reserve Statistical Release G13 (415) or its successor publication most recently released prior to the date the interest rate is established.

(N) Rehabilitation. "Rehabilitation" for the purpose of adjustments to the Base Amount shall mean the substantial reconstruction, renovation or revitalization of the Participation Rent Area (and the Major Tracts to the extent the cost of such reconstruction, renovation or revitalization of the Major Tracts is paid by Lessee in connection with the reconstruction, renovation or revitalization of the Retail Center, including the Participation Rent Area, as a whole) after the initial redevelopment thereof, or any portion thereof, subject to the following:

(i) The Rehabilitation shall have occurred fifteen (15) years or more following substantial completion of the Improvements;

(ii) The Rehabilitation area, for purposes of this Section 3.2, shall be limited to the Participation Rent Area (and the Major Tracts to the extent Lessee pays the cost of Rehabilitation of the Major Tracts and such Rehabilitation is included within a Rehabilitation of the Retail Center, including the Participation Rent Area, as a whole);

(iii) The Rehabilitation costs (including all hard construction costs and the soft costs associated therewith, but excluding the cost of prior capital expenditures made by the Lessee for deferred maintenance) are, in the aggregate, equal to or greater than twenty percent (20%) of the hard construction costs expended in the original construction of the improvements in the Participation Rent Area and the soft construction costs associated therewith (including engineering and architectural fees), adjusted for inflation as hereinafter provided. For purposes of adjusting such construction costs for inflation, the original construction costs described above shall be increased by an amount equal to the percentage change in construction industry costs from the completion of the original improvements until the commencement of the rehabilitation as published by the Engineering News Record, or a similar construction industry index as the parties shall agree in the event such information is not available in the Engineering News Record or such publication is no longer published; and

(iv) The Rehabilitation is undertaken as a single work of improvement which is substantially completed within three (3) years from the date of commencement.

Lessee shall provide the Agency with evidence of its compliance with these provisions and with written notice of its commencement of a Rehabilitation within thirty (30) days of its commencement thereof. In addition, Lessee shall provide the Agency with written notice of its substantial completion of the Rehabilitation within thirty (30) days thereafter.

(O) Special Capital Expenditure. A "Special Capital Expenditure" shall mean a capital expenditure, or the occurrence of a capital expenditure, by Lessee in accordance with Section 3.2.2(C)(1) hereof.

(P) Special Capital Expenditure Debt Service. The "Special Capital Expenditure Debt Service" shall mean an assumed annual debt service on a Special Capital Expenditure based upon the annual constant rate of payment for a thirty (30) year level monthly payment, self-amortizing loan, bearing interest at 250 basis points over the interest rate on ten-year treasury notes determined at the time of the completion of the Special Capital Expenditure. In the event the interest rate on ten-year treasury notes is no longer available, the parties shall agree on a similar standard. If either Lessee or Agency determine that the foregoing formula is no longer appropriate for determining the Special Capital Expenditure Debt Service, such party may notify the other party in writing within ninety (90) days following the end of the fifteenth (15th) Lease Year or within ninety (90) days following the end of each third (3rd) Lease Year thereafter. In the event the parties cannot agree on whether continued use of such formula is appropriate or on a substitute formula within a reasonable time period following such notice, the parties shall submit the matter to arbitration in accordance with the rules of the American Arbitration Association. Any notice given by Agency pursuant to this Section 3.2.5(P) following the occurrence of an Uninsured Casualty or Agency's receipt of a notice from Lessee of a Rehabilitation intended by Lessee shall not be effective with respect to the calculation of Special Capital Expenditure Debt Service for the costs relating to the Restoration of the Uninsured Casualty or the Rehabilitation, as applicable.

(Q) Tenant Improvements. The term "Tenant Improvements" shall mean all improvements to the premises described in a Project Tenant lease, other than the shell building and related appurtenances constructed by Lessee, which are constructed pursuant to a written agreement with the Project Tenant.

## ARTICLE 4.0 DEVELOPMENT OF THE LEASE PREMISES

### 4.1 Scope of Development by Lessee.

Lessee shall develop and construct, or shall cause the development and construction of, certain improvements ("Improvements") on the Lease Premises to the full extent and in the manner set forth in the Scope of Development for the Lease Premises (attached hereto as Exhibit "5"), and in the "Approved Plans and Drawings." The Approved Plans and Drawings are the plans, drawings and related documents prepared by Lessee and approved by Agency, Broadway and Nordstrom pursuant to the REA. Lessee shall develop and construct, or shall cause the development and construction of, the Onsite Appurtenant Parking in accordance with Section 1.7.2 of this Lease.

### 4.2 Construction Schedule.

#### 4.2.1 Commencement and Completion.

Lessee shall begin and complete all construction and development of the Improvements on the Lease Premises and the Onsite Appurtenant Parking within the times specified in the REA or within such reasonable extensions of time as may be granted by Agency or as provided for in Sections 4.2.2 and 13.8 of this Lease. The schedule is also subject to revision from time to time as mutually agreed upon in writing by and between Lessee and Agency.

#### 4.2.2 Delays or Suspension.

Notwithstanding anything contained in Section 4.2.1 above, if either or both Majors delay or suspend construction of the improvements required to be constructed by the Majors pursuant to the REA, Lessee may delay or suspend construction and development of the Improvements until the earlier of (i) the date both Majors have commenced or resumed construction of their respective improvements, or (ii) the date Lessee has procured a Substitute Major Retailer for each Major who has defaulted in its construction obligations under the REA, and construction has commenced or resumed on both Major Tracts; provided, however, that in no event shall Lessee's delay or suspension extend beyond the time set forth in Section 13.8.1(C) hereof for Lessee to procure a Substitute Major Retailer. Notwithstanding any other provision of this Lease, the delay or suspension of construction and development by Lessee pursuant to this Section 4.2.2 shall not constitute a Default under this Lease.

#### 4.3 Cost of Construction.

The cost of developing the Lease Premises and the Onsite Appurtenant Parking and construction of all Improvements thereon shall be borne by Lessee, except (i) for the work expressly set forth in this Lease, the REA or the Scope of Development to be performed by Agency, the Majors, or others; (ii) the work set forth under the DDA to be performed by Agency, including, but not limited to, the work to be performed by Agency under Sections 201, 205, 211, 212, 214, 215, 305, 313 and 701 of the DDA; and (iii) the Common Improvement Work (as defined in the REA) to be performed by Agency under Article 6 of the REA. Agency and Lessee shall each pay their own costs necessary to administer and carry out their respective responsibilities and obligations under this Lease.

#### 4.4 Rights of Access During Construction.

During construction, a designated representative of each of Agency and City shall have a reasonable right of access to the Lease Premises for inspection purposes in accordance with Section 10.6 of the REA.

#### 4.5 Nondiscrimination During Construction.

Lessee agrees that, in the construction on the Lease Premises, there shall be no discrimination against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin or ancestry. Lessee shall include this provision in all subleases, contracts and agreements entered into by Lessee with respect to development of Improvements on the Lease Premises.

#### 4.6 Local, State and Federal Laws.

Lessee shall carry out the construction on the Lease Premises in conformity with all applicable laws, including all applicable federal and state labor standards.

#### 4.7 City and Other Governmental Permits.

Before commencement of construction or development of any buildings, structures or other work of improvement on the Lease Premises, Lessee shall, at its own expense, secure, or cause to be secured, any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Agency shall provide all proper assistance to Lessee in securing such permits. Notwithstanding anything contained herein, Agency shall, at its own expense, secure, or cause to be secured, any and all required permits related to any work to be performed by Agency under the Scope of Development or the REA, including, but not

limited to, any work related to traffic mitigation work or Project Approvals.

#### 4.8 Mechanic's Liens.

Lessee covenants not to permit any mechanic's, materialmen's, contractor's or subcontractor's lien or any other claims or demands of any nature arising from the construction of the Improvements or the portion of the Onsite Appurtenant Parking to be constructed by Lessee to be enforced against the Lease Premises or the Onsite Appurtenant Parking. If Lessee desires to contest such lien, claim or demand, Lessee shall deposit with Agency an adequate bond or other security reasonably satisfactory to Agency to prevent enforcement of the lien if the contest is unsuccessful. In the alternative, Lessee may furnish such security as may be required to and for the benefit of any title insurance company designated by Agency or Lessee, to permit a title report to be issued for the Lease Premises or the Onsite Appurtenant Parking showing the Lease Premises or Onsite Appurtenant Parking free and clear of such lien. Lessee covenants and agrees to indemnify, defend and hold Agency free and harmless of any and all mechanic's, materialmen's, contractor's or subcontractor's liens, claims and demands, together with any costs and expenses incurred by Agency in connection with such liens, claims or demands arising out of the construction of the Improvements on the Lease Premises or the portion of the Onsite Appurtenant Parking constructed by Lessee.

#### 4.9 Certificates of Completion.

Upon the completion of construction of the Improvements and the portion of the Onsite Appurtenant Parking constructed by Lessee, Lessee shall deliver to Agency a copy of Lessee's architect's standard AIA Certificate of Completion as provided in Section 10.11 of the REA. Thereafter, Agency shall inspect the Improvements and such portion of the Onsite Appurtenant Parking and furnish Lessee with its own Certificate of Completion ("Certificate of Completion") for the Lease Premises and the portion of the Onsite Appurtenant Parking constructed by Lessee as provided in Section 10.11 of the REA.

After recordation of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Lease Premises (or portion thereof) for which such Certificate of Completion was issued, shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Lease with respect to the construction of the Improvements, except that such party shall be bound by any covenants contained in the deed, lease, sublease, mortgage, deed of trust, contract or other instrument of transfer made in

accordance with this Lease. Neither the Agency nor any other person, after issuance of a Certificate of Completion, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Lease as a result of a default in or breach of any provision of this Lease with respect to completion of the Improvements.

Any Certificate of Completion issued under this Section 4.9 or the REA shall not constitute evidence of compliance with or satisfaction of any obligation of Lessee to any holder of a Leasehold Mortgage, nor to any insurer of a Leasehold Mortgage securing money loaned to finance the Improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code, Section 3093, nor does it constitute a certificate of occupancy issued by the City pursuant to the Santa Barbara Municipal Building Code as amended by the Santa Barbara Municipal Code.

#### 4.10 Construction Signs.

During the construction of the improvements on the Lease Premises, Lessee shall post a sign on the perimeter of the Lease Premises indicating that the construction is part of a redevelopment project sponsored by the Agency and the City.

### ARTICLE 5.0 USE OF THE LEASE PREMISES AND THE IMPROVEMENTS

#### 5.1 Permitted Uses.

Lessee shall have the right, and Lessee covenants and agrees, to use the Lease Premises for the following purposes and for no other: a first class, high quality, shopping center complex containing (i) retail, office and service establishments common to high quality regional shopping centers located in Southern California, which may include retail sales from vendor carts and kiosks; (ii) a performing and visual arts center; and (iii) pedestrian walkways, public courts and plazas and other open space uses. Lessee agrees that it shall not use the Lease Premises for any purpose prohibited by the REA. In the event Lessee acquires either or both of the Major Tracts from Agency during the Lease Term, such Major Tract or Parcels shall be used by Lessee as specified in the REA, subject to such other written agreements as Lessee and Agency may enter into. In the event Lessee acquires the Onsite Parking Tract from Agency during the Lease Term, the Onsite Appurtenant Parking shall be used by Lessee as specified in the Parking Covenants recorded against the Onsite Parking Tract, subject to such other agreements as Lessee and Agency may enter into.



Lessee agrees that it shall exercise reasonable efforts subject to prevailing market conditions, to cause a substantial portion (i.e., eighty-five percent (85%) or more of the gross leasable area thereof) of the Mall Stores (excluding those Mall Stores that have access fronting on Chapala Street and excluding any space within the Ott and Parma Rehabilitation Parcels) to be occupied by retail or service establishments devoted to the sale of tangible property subject to sales tax in effect at the Effective Date. Any changes to such sales tax shall not affect Lessee's use of the Lease Premises or its sublease of all or any portion thereof.

5.2 Management and Operation of the Retail Center.

5.2.1 Management.

The Lease Premises and the Improvements shall be operated and managed, or caused to be operated and managed, by Lessee in a prudent and business-like manner.

5.2.2 Reciprocal Easement Agreement.

Agency, Lessee and the Majors heretofore have executed the REA which provides for the construction, operation and maintenance of the Retail Center.

5.2.3 Agency Participation in Planning and Selection of Mall Tenants

It is understood that the Agency desires a substantial amount of the tenant use in the Lease Premises to be for the sale of retail goods subject to sales tax, and that certain categories of merchandise be available to the public. Prior to the initial leasing of space in the Mall Stores, Lessee shall submit to Agency for its approval a marketing plan for the Mall Stores setting forth categories of goods and services and a representative sampling of the names of prospective tenants within the various categories as a goal to the end that the Lease Premises maintains the quality defined in the Scope of Development, and reflects the Agency's comments and desires. Agency acknowledges that the marketing plan shall comply with the requirements of Section 17.3 of the REA. During the initial lease-up of the Mall Stores, Lessee shall, from time to time in accordance with prevailing market conditions, restudy and revise the marketing plan and submit the same to Agency for Agency's review and comment. Lessee shall make a good faith effort, subject to prevailing market conditions, to comply with the then currently effective marketing plan.

#### 5.2.4 Leasing of Mall Stores.

Lessee shall make a good faith effort, subject to prevailing market conditions, to comply with the approved marketing plan and the Relocation and Local Tenant Preference Plan more particularly described in Section 5.3 below in connection with the initial leasing of the Mall Stores. After the initial lease-up of the Mall Stores, the selection of rollover Mall Store subtenants shall be at Lessee's discretion, subject to Lessee's reasonable efforts to sublease that portion of the Mall Stores specified in Section 5.1 to subtenants generating sales tax revenues (in accordance with Section 5.1) and to tenancies consistent with similar quality shopping centers having a comparable Major mix.

#### 5.2.5 Visual and Performing Arts Complex.

Lessee shall operate and maintain or cause to be operated and maintained the visual and performing arts complex components as part of the entire Retail Center. The components ("Components") of this complex (the "Arts Complex") shall be used to encourage, promote and display artistic and cultural works and events for the benefit and enjoyment of the general public and as an amenity for the people of the City (as distinguished from businesses and patrons of the Retail Center itself), and shall be operated and managed with those goals as the primary objective (as opposed to operating as a profit-motivated feature of the Retail Center).

Lessee may sublease or enter into operating or management agreements regarding all or portions of the Components to not-for-profit organizations dedicated to the promotion of arts and culture in the City, provided that any such sublease or agreement shall not require any payment by the sublessee/operator to Lessee and (i) shall not relieve Lessee from any obligation or duty under this Lease, and (ii) shall not be entered into unless it has first been submitted to and approved by Agency. Any such sublease or agreement may provide that the sublessee/operator or the artists occupying or using the facilities shall be responsible for the payment of utility costs for the applicable Component and for internal housekeeping costs. The approval of Agency under this Section 5.2.5 shall be limited to the determination that a sublessee/operator is a not-for-profit organization dedicated to the promotion of arts and culture in the City, but shall not include any supervision, oversight or right of approval of the selection, content, programming or presentation of the art or other cultural items.

Not less than two (2) calendar months prior to the end of the first year of the agreement and each such year thereafter, the Lessee (and the operator, if any) shall submit to Agency for its approval (i) an operating plan for the next year and

(ii) a budget for the next year's operation. Each such budget shall contain all reasonably anticipated expenses needed for the year's operating plan and shall specify the source of all income and contributions sufficient to defray such expenses. In the case of a not-for-profit organization as operator, if the operating plan is not so submitted, or having been submitted is not approved by Agency, or if the budget is not in balance, then the agreement shall be cancellable at any time at the option of Lessee or Agency.

If the Components are not being used and/or operated by an organization for the purpose set forth above, Lessee shall prepare and submit its own operating plan to Agency for Agency's approval, and shall operate the Components at its sole expense or with funds derived from its operations in the Lease Premises in accordance with the approved plan. All capital and operating costs and expenses regarding the Components (including, but not limited to, their construction, repair, replacement, maintenance and operation) shall be paid and incurred by private parties or by not-for-profit organizations properly chartered for such purposes, and none of the construction, operation, maintenance, repair or any other cost or expense for or arising out of the Components shall be a charge upon Agency, City or any other public entity, except to the extent it effects the calculation of Net Cash Flow After Debt Service for purposes of determining Annual Participation Rent.

Lessee shall at all times employ and maintain an employee on its staff to coordinate the operation and to provide scheduling and management of the Components.

In the event the Components are not being fully utilized or performing their intended function, Lessee and Agency shall negotiate in good faith to determine the viability of the Arts Complex and alternative uses thereof; provided, however, that unless Lessee and Agency shall reach agreement on the same, Lessee's obligations under this Section 5.2.5 shall continue.

The obligations of Lessee set forth in this Section 5.2.5 shall not create any rights in or obligations to any third persons or entities other than Agency, and Agency alone shall be entitled to enforce or waive the provisions of this Section 5.2.5.

### 5.3 Participation Preferences for Local Businesses.

Pursuant to the plan submitted to and approved by the Agency pursuant to Section 704 of the DDA ("Relocation and Local Tenant Preference Plan"), Lessee shall provide reasonable preferences and opportunities for commercial retail sales and service businesses previously located on the Lease Premises, or other local businesses to become subtenants in

the Lease Premises to the extent such businesses are appropriate for the Lease Premises and at rental rates and other lease terms consistent with the approved plan. Lessee shall negotiate in good faith with displaced businesses in order to accommodate reentry.

The obligations of Lessee set forth in this Section 5.3 shall not create any rights in or obligations to any third persons or entities other than Agency, and Agency alone shall be entitled to enforce or waive the provisions of this Section 5.3.

#### 5.4 Approved Leases and Mall Tenants.

##### 5.4.1 Written Consent of Agency.

Lessee shall not, without the written consent of Agency, lease, sublease, let for hire or otherwise allow any person or party to use or occupy any space in the Lease Premises except under an "Approved Lease" in the ordinary course of business of Lessee's operation of the Retail Center.

##### 5.4.2 Approved Leases.

An "Approved Lease" for Mall Stores shall be any lease substantially in the form of the standard sublease form approved by Agency, including all changes made to such sublease form from time to time. Lessee's sublease form shall be submitted to Agency for approval prior to the completion of the Improvements and the commencement of leasing of the Mall Stores and each time the standard sublease form is materially changed. The standard sublease form for the Mall Stores shall not be required to contain any specific requirements regarding the amount of base rent, percentage rent or increases in rent which shall at all times be subject to then existing market conditions. Notwithstanding the foregoing, with respect to Mall Stores to be subleased by Large National Tenants, an "Approved Lease" shall include the standard form lease of such Large National Tenant, provided such form lease does not affect Agency's reversionary interest, except to the extent Agency has entered into a Non-Disturbance Agreement with such Large National Tenant.

Agency shall have no right to approve any specific sublease or changes to the standard sublease form made pursuant to negotiations with specific Mall Tenants, regardless of the materiality of such changes, and any sublease under the standard sublease form approved by Agency which contains negotiated changes (whether or not material) shall constitute an Approved Lease. In addition, nothing contained in this Lease shall give the Agency the right to approve any specific Mall Tenant.

#### 5.4.3 Specialty Vendors.

With respect to the use and occupancy of mall space (other than Mall Stores under Approved Leases) by specialty vendors (e.g., vendor carts, kiosks, etc.) or temporary tenants, Agency shall have the right to approve the standard form of any lease, concession agreement, license or other agreement to be used in connection with any such vendor only if the term thereof is intended to exceed one (1) year. In such event, Agency shall have the right to approve such standard form but not any negotiated changes in the approved standard form.

#### 5.4.4 Leases.

Any lease, sublease, concession agreement, license or other agreement entered into pursuant to the preceding paragraphs of this Section 5.4 shall be an "Approved Lease."

#### 5.4.5 Non-Disturbance Agreements.

Each Approved Lease shall be subject and subordinate to the rights of Agency under this Lease and no subletting shall affect any of the obligations or liabilities of either of the parties hereto to the other. Notwithstanding the foregoing, Agency shall undertake in writing with any Mall Tenant (if requested by Lessee on behalf of a Mall Tenant) to not disturb such Mall Tenant's occupancy under such Approved Lease and to recognize such Approved Lease provided such Mall Tenant is not in default after any notice of cure provided therein under its Approved Lease and provided such Mall Tenant attorns to Agency for the unexpired term (and options if exercised) of its Approved Lease ("Non-Disturbance Agreement"). Agency shall be required to execute and deliver Non-Disturbance Agreements to Mall Tenants under Approved Leases which (a) have (i) a lease term of ten (10) years or less for a gross leasable area of seven hundred fifty (750) square feet or more, or (ii) a lease term of fifteen (15) years or less for a gross leasable area of five thousand (5,000) square feet or more, (b) contain provisions that provide for termination of such Approved Lease in the event that this Lease is terminated under Section 7.6 (Damage and Destruction) or Article 12 (Eminent Domain) below, and (c) are not for a term in excess of the Lease Term of this Lease. With respect to all other Approved Leases, Agency shall not be required to enter into a Non-Disturbance Agreement unless and until it has reviewed the respective Approved Lease and the form of Non-Disturbance Agreement related thereto, reasonably approved the form of Non-Disturbance Agreement, and reasonably determined whether Agency's execution of such Non-Disturbance Agreement is appropriate under the circumstances. Lessee shall deliver to Agency a copy of the Approved Lease and the form of Non-

Disturbance Agreement with a letter advising Agency that any objections to the proposed form of Non-Disturbance Agreement must be made in writing by a specified date, which date shall not be less than five (5) days from the date of Lessee's letter. The failure of Agency to provide such objections to the form of Non-Disturbance Agreement within the time period specified in Lessee's letter shall be deemed an approval by Agency of such Non-Disturbance Agreement and a determination to execute and deliver such Agreement. Nothing contained in this Section 5.4.5 shall confer upon Agency the right to approve any specific Approved Lease.

#### 5.4.6 Approval of Forms by Agency Representative.

With respect to all Agency approvals required or requested by Lessee under Section 5.4 of this Lease, Lessee shall submit the applicable form or other material to the Agency Representative, who shall have full power and authority to act on behalf of the Agency in reviewing and approving the same. The Agency Representative shall deliver to Lessee its written approval or specific written objections to any submitted form or other material within five (5) business days after receipt thereof. The failure of the Agency Representative to so approve or object within said five (5) day period shall be deemed approval of such form or material.

#### 5.5 Abandonment.

In the event the Mall Stores remain entirely unoccupied at any time following the issuance of a Certificate of Completion for the Improvements on the Lease Premises for a period of one (1) year with no reasonable attempt by Lessee to market the Mall Stores during such period, Agency shall give Lessee written notice of such fact and request Lessee to commence marketing the Mall Stores. If Lessee fails to actively market the Mall Stores and no Mall Tenants have taken possession of any space in the Lease Premises and opened for business within one (1) year following Lessee's receipt of such notice, Lessee shall be deemed to have abandoned the Lease Premises, and such abandonment shall constitute a Default by Lessee under Section 13.3 of this Lease. Notwithstanding any provision contained hereunder, Agency's sole and exclusive remedy for abandonment of the Lease Premises by Lessee hereunder shall be to terminate this Lease, subject to the rights of Mortgagees in accordance with Article 9 hereof, and revest in Agency the leasehold interest transferred to Lessee hereunder, by written notice to Lessee of its intent to do so. This Section 5.5 shall not apply if the Mall Stores are not occupied or Lessee is unable to actively market the Mall Stores due to an Unavoidable Delay or if the Mall Stores have been damaged or destroyed and Lessee is in the process of restoring the Mall Stores in accordance with Section 7.6

hereof, or if Lessee is in the process of Rehabilitating the Mall Stores.

5.6 Obligation to Refrain from Discrimination.

Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Lease Premises or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Lease Premises nor shall the Lessee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Lease Premises.

5.7 Form of Nondiscrimination and Nonsegregation Clauses.

Lessee shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Lease Premises (or any part thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All such deeds, leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, religion, creed, national origin, or ancestry, in the leasing, subleasing, renting, transferring, use, occu-

pancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

#### 5.8 Rights of Access - Public Improvements and Facilities.

Agency reserves the right to enter upon the common areas of the Lease Premises in accordance with Section 4.4 of the REA for purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities, if any, to be constructed by Agency or City and located on such common areas.

#### 5.9 Quiet Enjoyment.

Lessee shall own all Improvements located on the Lease Premises during the Lease Term. The parties hereto mutually covenant and agree that so long as Lessee (or any person or entity claiming any interest in the Lease Premises or Improvements, or any portion thereof, by, through or under Lessee) keeps and performs the covenants herein contained, Lessee (or any person or entity claiming any interest in the Lease Premises or Improvements, or any portion thereof, by, through or under Lessee) shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Lease Premises and the Improvements, or the applicable portion thereof, pursuant to the terms of this Lease.

### ARTICLE 6.0 UTILITIES, TAXES, ASSESSMENTS AND OTHER CHARGES

#### 6.1 Utilities.

Lessee agrees to pay, or cause to be paid by Mall Tenants, as appropriate, as and when they become due and payable, all charges for water, sewage, gas, light, heat, telephone, electricity and other utility and communication services rendered or used on or about the Lease Premises at all times during the term of this Lease.



6.2 Payment of Impositions (Including Taxes and Assessments).

The Lease Premises leased to Lessee hereunder shall be assessed and taxed in the same manner as privately owned property as contemplated in California Health and Safety Code Section 33673 and amendments thereto or replacements thereof.

Lessee agrees to pay, or cause to be paid by Mall Tenants as appropriate, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (1) the Lease Premises or any part thereof or any appurtenance thereto; (2) the rent and income received by Lessee from Mall Tenants or others for the use or occupation of the Lease Premises and the Improvements thereon; or (3) this transaction or any document to which Lessee is a party, creating or transferring an interest or estate in the Lease Premises; except for any assessments or fees that are limited by or that Agency is required to pay pursuant to the Project Approvals, the Scope of Development, or the Parking Agreement (collectively, "Impositions" and individually, an "Imposition"). Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease and a part of which is included in a period of time prior to or after the expiration of the term of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon, become a lien upon the Lease Premises, or shall become payable, during the term of this Lease) be adjusted between Agency and Lessee as of the commencement or expiration of the Lease Term, so that Lessee shall pay that portion of such Imposition applicable to the Lease Term and Agency shall pay the remainder thereof.

Except as provided in Section 6.3 hereof, the provisions of this Section 6.2 shall not be construed to require Lessee to pay any Impositions imposed upon Mall Tenants.

Lessee and Agency acknowledge that the businesses on the Lease Premises may be subject to a Parking and Business Improvement Area Tax ("PBIA Tax") levied by the City. The aggregate amount of the PBIA Tax applicable to businesses on the Lease Premises, Broadway Tract and Nordstrom Tract shall not exceed One Hundred Thousand Dollars (\$100,000) in the

aggregate per year ("PBIA Tax Maximum") and Agency shall assume the obligation for payment of all PBIA Taxes in excess of the PBIA Tax Maximum levied against the businesses on the Lease Premises, Broadway Tract and Nordstrom Tract in the aggregate in accordance with the REA. Agency's obligation to pay all PBIA Taxes in excess of the PBIA Tax Maximum shall apply regardless of whether the PBIA Tax is levied against Lessee or its tenants.

### 6.3 Payment of Impositions in Installments.

If, by law, any Imposition may at the option of the payer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during the term of this Lease as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; provided, however, that the amount of all installments of any such Imposition which will be the responsibility of Lessee pursuant to Section 6.2 hereinabove, and which are to become due and payable after the expiration of the term of this Lease, shall be deposited with Agency for such payment on the date of termination of the Lease.

Lessee reserves the rights provided under Section 6.6 to contest any Impositions.

### 6.4 Tax Receipts.

Upon written request by Agency, Lessee shall furnish to Agency within forty-five (45) days after the date when an Imposition would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to Agency evidencing payment thereof.

### 6.5 Limits of Tax Liability.

The provisions of this Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profit taxes assessed against Agency, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes of Agency; provided, however, that Lessee shall pay all taxes assessed by any governmental authority by virtue of any operation by Lessee conducted on or out of the Lease Premises that, if not paid when due, would constitute a lien on the Lease Premises. It is agreed that in the event the State of California or any taxing authority thereunder (other than the City) changes or modifies the system of taxing real estate so as to tax the rental income from real estate in lieu of or in substitution (in whole or in part) for the real estate taxes

so as to impose a liability upon Agency for the amount of such tax, then Lessee shall be liable under this Lease for the payment of the alternative taxes so imposed during the term of this Lease to the same extent as though the alternative tax was a tax upon the value of the Lease Premises. In order to determine the amount of such alternative tax for which Lessee shall be liable, the Lease Premises shall be considered as if it was the only asset of Agency, and the rent paid hereunder shall be considered as if it were the only income of Agency.

#### 6.6 Permitted Contests.

Lessee shall have the right to contest the validity or the amount in part or in full of any Imposition which it is obligated to pay under the provisions of this Lease. Lessee agrees that all such proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Lessee's right to contest under this Section 6.6 shall include the right to protest the formation of any special assessment district or area other than the formation of a downtown parking assessment area ("DPA") Pocket Assessment Area (as defined in the Parking Agreement) formed in accordance with the Parking Agreement, and the right to protest any assessments levied on the Lease Premises other than the assessments or fees levied in connection with the DPA or Pocket Assessment Area. In addition, Lessee shall have no obligation to pay, and shall have the right to protest, any additional transportation improvement fees or assessments, other than Lessee's payment of a portion of the 1987 Downtown Transportation Improvement Fee levied by the City pursuant to Resolution 87-030 as set forth in the Scope of Development.

Lessee shall give Agency prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs if Lessee intends to withhold payment of the Imposition pending determination of the contest or at least ten (10) days before institution of any contest if Lessee intends to contest such Imposition subsequent to payment thereof. Lessee may only exercise its right to contest an Imposition hereunder while withholding payment thereof if (i) the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Lease Premises, or any part thereof, to satisfy the same, or (ii) if Lessee, prior to the date such Imposition is due and payable, shall have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such Imposition, or to prevent any sale, foreclosure or forfeiture of the Lease Premises or any part thereof, by reason of such nonpayment; provided, however, that Lessee shall not be required to post security with Agency if Lessee then meets the requirements for self-insurance under Section 11.4 hereof. In the event of any such contest and the final deter-

mination thereof adversely to Lessee, Lessee shall, before any additional fine, interest, penalty or cost may be added there- to for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, Agency will promptly return to Lessee such security as Agency shall have received in connection with such contest.

If necessary in connection with any such contest, Agency shall cooperate reasonably in such contest permitted by this Section 6.6, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless Agency against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Agency in connection therewith.

#### 6.7 Liens - Agency's Right to Cure.

Lessee shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, other monetary encumbrance or charge on or pledge of the Lease Premises or the Improvements or fixtures and furnishings, or any part thereof, or Lessee's interest therein, or the Annual Participation Rent or other sums payable by Lessee under this Lease, other than such mortgages or fixture financings permitted under Articles 7.0 and 10.0 hereof, and Leasehold Mortgages (as defined under Section 9.1.1 below) as are permitted pursuant to Article 9.0. Lessee shall notify Agency promptly of any lien or monetary encumbrance, other than the title exceptions existing at the commencement of the Lease Term and approved by Lessee, or which have been created on or attached to the Lease Premises or the Improvements, or to Lessee's leasehold estate therein, whether by act of Lessee or otherwise.

If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, lien, encumbrance, charge or pledge (other than a Leasehold Mortgage), Agency may (but shall not be obligated to) pay or discharge it, and the amount paid by Agency and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the rate of three percent (3%) plus the Reference Rate (but in no event in excess of the maximum rate allowed by law) on the date payment is made by Agency, shall be deemed to be and shall be payable by Lessee as additional rent and shall be

reimbursed to Agency by Lessee on demand, provided that Lessee shall have failed to pay such Imposition within five (5) days after written notice from Agency of its intention to pay. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section 6.7 if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen. The right of Agency to pay or discharge any Imposition that Lessee has failed to pay or discharge shall not apply to any Imposition that Lessee elects to contest under Section 6.6 of this Lease, provided (i) the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Lease Premises, or any part thereof, to satisfy the same, or (ii) prior to the date such Imposition is due and payable, Lessee shall have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such Imposition, or to prevent any sale, foreclosure or forfeiture of the Lease Premises or any part thereof, by reason of such nonpayment. Notwithstanding anything contained herein, Agency shall have no right to cure a default by Lessee under a Leasehold Mortgage.

This Lease shall be superior to any mortgage, lien, encumbrance, charge or pledge of the Lease Premises which Agency, directly or indirectly, may create or permit to be created or to remain, except as are expressly required or permitted by this Lease and Lessee shall not be required to subordinate thereto. Nothing in this Section 6.7 shall change the respective rights and obligations of Agency and Lessee with respect to the payment of assessments or fees levied by Agency against the Lease Premises in accordance with the Parking Covenants.

#### ARTICLE 7.0 OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS

##### 7.1 Ownership During Term.

7.1.1 Improvements. All Improvements constructed on the Lease Premises as permitted or required by the DDA and this Lease shall, during the Lease Term, be and remain the property of Lessee, and Agency shall not have title thereto; provided that, except as otherwise provided in this Lease with respect to Alterations (Section 7.5), Damage and Destruction (Section 7.6), and Eminent Domain (Section 12.0), Lessee shall have no right to waste, destroy, demolish or remove the Improvements, except for the rights of Mall Tenants to alter or modify the Mall Stores during the Lease Term as permitted by Section 7.5 of this Lease; and provided further that Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease and the REA. Agency and Lessee covenant for themselves and all persons

claiming under or through them that the Improvements are real property.

7.1.2 Personal Property. All personal property, furnishings, fixtures and equipment which are not so affixed to the Lease Premises or the buildings thereon as to require substantial damage to the buildings upon removal thereof shall constitute personal property including, but not limited to: (1) functional items related to the everyday operations of the Mall Stores and the Lease Premises; (2) personal property, furnishings, fixtures and equipment of the nature or type deemed by law as permanently resting upon or attached to the buildings or land by any means including but not limited to cement, plaster, nails, bolts or screws, or essential to the ordinary and convenient use of the Lease Premises and the Improvements as Mall Stores; and (3) any personal property, furnishings, fixtures and equipment owned by Mall Tenants. At any time during the Lease Term and at termination thereof, Lessee and Mall Tenants shall have the right to remove any and all such personal property, furnishings, fixtures and equipment; provided that Lessee repairs any damage to Lease Premises or the Improvements caused by such removal.

7.1.3 Equipment Leasing. Some of the equipment, fixtures and furnishings now or hereafter installed and used by Lessee or Mall Tenants on the Lease Premises and in, on and around the Improvements, may or will be directly financed by a third party lender or otherwise subjected to a security interest or owned by an equipment rental company ("Equipment Lessor") and leased to Lessee or Mall Tenants either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an equipment sublessor ("Equipment Sublessor"), or owned by Mall Tenants, and Agency hereby agrees to recognize the rights therein of any such third-party lender or Equipment Lessor or Equipment Sublessor (or assignee) or the Mall Tenants. Such equipment, fixtures and furnishings are collectively referred to in this Lease as "Trade Equipment." Agency agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Lease Premises and the Improvements, or as owned by the Mall Tenants, shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Lease Premises or the Improvements and further agrees to recognize the rights therein of any such third party lender or Equipment Lessor or Equipment Sublessor (or assignee) or the Mall Tenants. Lessee shall have the right at any time, whether or not Lessee is in default hereunder, to remove or replace any or all Trade Equipment, regardless of whether attached or affixed to the land or Improvements, and, to the extent of their respective interests therein, such third-party lender or Equipment Lessor or Equipment Sublessor (or assignee) or the Mall Tenants shall also have such a

right. Agency waives the right of distraint and agrees that it does not have and shall not assert any right, lien or claim in or to the financed or leased Trade Equipment or to Trade Equipment upon which Lessee has granted a security interest in accordance with this Section 7.1 or owned by the Mall Tenants and agrees that any third-party lender or Equipment Lessor or Equipment Sublessor (or assignee) or the Mall Tenants may remove and dispose of the same without reference to, and free and clear of, any demand of Agency, and that such disposal or sale may be made on the Lease Premises. Upon the request of Lessee, Agency shall promptly execute and deliver to Lessee a lien waiver in the form required by Lessee, the third party lender, Equipment Lessor, Equipment Sublessor (or assignee) or the Mall Tenants, under which Agency waives any and all rights, liens or claims to any or all Trade Equipment.

7.1.4 Basic Building Systems. For purposes of this Lease, the personal property, furnishings, fixtures and equipment described in Section 7.1, including Trade Equipment above, shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, escalators, chillers, boilers, plumbing, sanitary fixtures and central air-cooling system.

## 7.2 Ownership at Expiration or Termination.

7.2.1 Property of Agency. At the expiration or earlier termination of the Lease Term, except as provided below, all Improvements, which constitute or are a part of the Lease Premises, shall become (without the payment of compensation to Lessee or others) the property of Agency free and clear of all claims and encumbrances on such Improvements by Lessee, and anyone claiming under or through Lessee, except for such title exceptions permitted or required during the Lease Term; provided, however, with respect to the earlier termination of the Lease Term, this provision shall not apply to Mall Stores subject to an Approved Lease for which Agency has delivered, or is required to execute and deliver, a Non-Disturbance Agreement, and to the rights of a Leasehold Mortgagee (as defined under Section 9.1.1 below) to obtain a new lease under Section 9.1. Lessee shall then quitclaim to Agency any and all rights, interests and claims to the Improvements. Subject to Section 13.10, Lessee agrees to and shall defend, indemnify and hold Agency harmless from and against all liability and loss which may arise from the assertion of any such claims and any encumbrances on such Improvements (except claims arising due to Agency's actions) and except for such title exceptions permitted or required during the Lease Term.

7.2.2 Removal by Lessee. Lessee shall not be required or permitted to remove the Improvements at the



expiration or sooner termination of the Lease Term except that, within sixty (60) days following the expiration or sooner termination of this Lease Term, Lessee (or as to Trade Equipment, Equipment Lessors or Equipment Sublessors (or assignees) or the Mall Tenants, as applicable) may remove all personal property, furniture, fixtures and equipment (including Trade Equipment) described in Section 7.1.2. Upon demand by Agency made prior to the expiration or sooner termination of the Lease Term, Lessee (or as to Trade Equipment, Equipment Lessors or Equipment Sublessors (or assignees) or the Mall Tenants, as applicable) shall remove such personal property furnishings, fixtures and equipment, including Trade Equipment, or any portion thereof designated by Agency prior to the expiration of such sixty (60) day period.

7.2.3 Unremoved Property. Any personal property, furnishings, fixtures or equipment (including Trade Equipment) described in Section 7.1.2 not removed by Lessee (or as to Trade Equipment, Equipment Lessors or Equipment Sublessors (or assignees) or the Mall Tenants, as applicable) within sixty (60) days of the expiration or sooner termination of the Lease Term, shall, without compensation to Lessee (or as to Trade Equipment, without compensation to Equipment Lessors or Equipment Sublessors (or assignees) or the Mall Tenants, as applicable), become Agency's property, free and clear of all claims to or against them by Lessee or any third person, firm or entity (including, as to Trade Equipment, Equipment Lessors or Sublessors (or assignees) or the Mall Tenants, as applicable); provided, however, the rights of the Mall Tenants in Trade Equipment shall continue if their respective Approved Leases remain in effect).

7.2.4 Condition of Property. Agency shall accept title to and possession of the personal property, furnishings, fixtures and equipment abandoned by Lessee and not required to be removed by Lessee as hereinabove provided in "as is" condition, without warranty as to condition, repair or fitness for use.

### 7.3 Maintenance and Repair of Improvements.

Subject to the provisions of this Lease concerning condemnation, alterations and damage and destruction, Lessee agrees to assume full responsibility for the operation and maintenance of the Lease Premises and the Improvements and all fixtures and furnishings thereon or therein, and all sidewalks and all landscaping and plaza and other common areas within the Lease Premises throughout the Lease Term hereof without expense to Agency unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve the Lease Premises, the Improvements, fixtures and furnishings and landscaping in a decent, safe and sanitary condition consistent with good shopping center practices and



in compliance with all applicable laws. Lessee agrees that Agency shall not be required to perform any maintenance, repairs or services, or to assume any expense not specifically assumed herein in connection with the Lease Premises and the Improvements thereon unless specifically required under the REA under the Parking Agreement and Parking Covenants.

Lessee agrees to maintain the Lease Premises and the Improvements in a first class condition during the first sixty-five (65) Lease Years of the Lease Term and thereafter in good condition subject to reasonable wear and tear for the remainder of the term.

Except as otherwise provided in this Section 7.3 and Section 7.5, the condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of such Improvements before the event giving rise to the work.

#### 7.4 Waste.

Subject to the alteration rights of Lessee and Mall Tenants and damage and destruction or condemnation of the Lease Premises or any part thereof, Lessee shall not commit or suffer to be committed any waste of the Lease Premises or the Improvements, or any part thereof.

Lessee agrees to keep the Lease Premises and the Improvements clean and clear of refuse and obstructions, and to dispose properly of all garbage, trash and rubbish.

#### 7.5 Alteration of Improvements.

Lessee shall not make or permit to be made any material, exterior alteration of, addition to or change in, the Improvements which would affect the exterior elevations (including materials selection and color) or the size, bulk and scale of the Lease Premises, other than routine maintenance and repairs, nor demolish all or any part of the Improvements, without the prior written consent of Agency. Nothing herein shall prohibit interior alterations or decorations, the removal and replacement of interior and/or "Tenant Improvements" of the Mall Stores, or reconfiguration of demising walls of the Mall Stores consistent with the leasing program and uses of the Lease Premises. In requesting consent for such exterior improvements as required by the foregoing, Lessee shall submit to Agency detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Lessee may make such other improvements, alterations, additions or changes to the Improvements which do not affect the exterior elevations (including materials

selection and color) or the size, bulk and scale thereof without Agency's prior written consent.

Notwithstanding the prohibition in this Section 7.5, Lessee may make such changes, repairs, alterations, improvements, renewals or replacements to the exterior elevations, materials, size, bulk or scale of the Improvements as are required by reason of any law, ordinance, regulation or order of a competent government authority, or are otherwise required for the continued safe and orderly operation of the Lease Premises.

7.6 Damage to or Destruction of Retail Center and Improvements.

7.6.1 Lessee to Give Notice.

In case of any material damage to or destruction of the Lease Premises or of the Improvements or any part thereof, Lessee will, within ten (10) days after Lessee becomes aware of such damage or destruction, give written notice thereof to Agency generally describing the nature and extent of such damage or destruction.

7.6.2 Restoration.

(A) Lessee's Rights Upon Damage and Destruction. In case of any damage to or destruction of the Improvements on the Lease Premises, or any part thereof, and subject to the next sentence, if the insurance proceeds, if any, on account of such damage or destruction to the Lease Premises are sufficient for the purpose, Lessee shall within a reasonable period of time commence and complete (subject to Unavoidable Delays) the restoration, replacement or rebuilding of the Improvements, together with such alterations and additions, or variations from the original plans for the exterior elevations (including materials selection and color) or the size, bulk and scale of the Improvements on the Lease Premises as may be approved by the Agency, and such alterations or changes as are required by then current building codes (such restoration, replacement, rebuilding, alterations and additions, together with any temporary repairs and property protection pending completion of the work being herein called "Restoration"). If the Improvements on the Lease Premises are damaged during the last ten (10) years of the Lease Term, or if the insurance proceeds collected with respect to such Improvements are not sufficient to complete Restoration, or if there are no insurance proceeds for the Improvements, or if Lessee elects pursuant to Section 7.6.4 not to restore all or a portion of the Improvements on the Lease Premises, then Lessee shall promptly as practicable following the damage or destruction and the settlement of insurance proceeds, if any, either (a) commence and complete, or cause the commencement

and completion of (subject to Unavoidable Delays), the Restoration of all or a portion of the damaged Improvements or (b) remove any rubble and cause the portion of the Lease Premises occupied by the damaged Improvements as to which Lessee has not elected to undertake Restoration to be returned to a safe condition and this Lease shall terminate as to the Lease Premises, or portion thereof. In the event this Lease terminates under this Section 7.6.2(A) as to a portion of the Lease Premises, the Base Amount shall be reduced by the percentage that the gross leasable area in the Lease Premises after the damage or destruction bears to the gross leasable area in the Lease Premises prior to the damage or destruction (i.e., the Base Amount shall be multiplied by a fraction, the numerator of which is the gross leasable area in the Lease Premises after the damage or destruction and the denominator of which is the gross leasable area in the Lease Premises prior to the damage or destruction to arrive at the Base Amount after such damage or destruction). The Annual Participation Rent Minimum shall be similarly reduced.

(B) Restoration Requirements. Subject to the provisions of Sections 7.6.4 and 7.7, if the Improvements on the Lease Premises shall be damaged or destroyed by any casualty (1) where the cost of Restoration for such Improvements will not exceed fifty percent (50%) of the full insurable value of the Improvements on the Lease Premises; and (2) which is required to be insured against by the terms of this Lease or is actually insured against by Lessee; and (3) where the Net Insurance Proceeds (as defined below) actually available to Lessee for Restoration are sufficient to restore the Improvements on the Lease Premises, then Lessee agrees to cause the Restoration of the Improvements on the Lease Premises to the condition that existed prior to said damage. If Agency's approval of any alterations in connection with the Restoration is required, Lessee shall submit, or cause the submittal of, plans and specifications related thereto for Agency's approval, which shall not be unreasonably withheld or delayed. In no event shall the requirement to rebuild set forth in this Section 7.6.2(B) be enforceable by Agency against Lessee unless (i) the Onsite Appurtenant Parking is either undamaged and in operation or is required to be restored in accordance with the Lot 1 Parking Covenants, and (ii) the Offsite Appurtenant Parking is undamaged and in operation or is required to be restored pursuant to the Offsite Parking Covenants, and is in fact so restored, or Lessee has received evidence satisfactory to Lessee that the Offsite Appurtenant Parking will in fact be restored.

If the Improvements on the Lease Premises shall be damaged or destroyed by any casualty where the cost of Restoration will exceed the amount referred to in subdivision (1) above, or where the casualty is not required to be insured against by the terms of this Lease and is not actually insured against,

or where the net insurance proceeds actually available to Lessee for Restoration are insufficient to restore the Improvements, Lessee shall have the election to either restore the Improvements on the Lease Premises in the same manner as provided above or to terminate this Lease as to the Lease Premises, or portion thereof, provided that, if Lessee elects to terminate, Lessee shall comply with all of the following conditions:

(1) Lessee shall give Agency notice of such termination within the later of (i) forty-five (45) days after the earlier of (a) the date that Lessee has received notice from each of the Majors or (b) the date that Lessee is required under the REA to receive notice from the Majors, of their respective elections whether or not to restore the improvements located on their respective Major Tracts, or (ii) fifty (50) days after settlement of insurance proceeds.

(2) Lessee shall pay to Agency Annual Participation Rent prorated to the date of such termination, and all additional rent payable to that same date.

(3) The Net Insurance Proceeds shall be disbursed and applied as set forth in Section 7.6.3.

(4) Lessee shall deliver possession of the Lease Premises or portion thereof, to Agency free and clear of all claims by or through Lessee and shall quitclaim its right, title and interest in the Lease Premises, or portion thereof, and the remaining Improvements applicable thereto, if any, subject to any and all rights (including the Onsite and Off-site Appurtenant Parking) which may survive termination pursuant to the REA, Parking Covenants and Parking Agreement.

In the event the Lessee elects not to restore the Improvements on the Lease Premises then this Lease shall terminate as to the Lease Premises, or portion thereof. In the event this Lease terminates under this Section 7.6.2(B) as to a portion of the Lease Premises, the Base Amount shall be reduced by the percentage that the gross leasable area in the Lease Premises after the damage or destruction bears to the gross leasable area in the Lease Premises prior to the damage or destruction (i.e., the Base Amount shall be multiplied by a fraction, the numerator of which is the gross leasable area in the Lease Premises after the damage or destruction and the denominator of which is the gross leasable area in the Lease Premises prior to the damage or destruction to arrive at the Base Amount after such damage or destruction). The Annual Participation Rent Minimum shall be similarly reduced.

(C) Net Insurance Proceeds. As used herein, the term "Net Insurance Proceeds" means the gross insurance proceeds paid by an insurer to Lessee for loss or damage to

the Improvements on the Lease Premises, less any and all costs and expenses (including, but not limited to attorneys' fees) incurred to recover said proceeds. Lessee agrees to promptly commence and prosecute to completion the settlement of insurance proceeds with respect to any event of damage or destruction of the Improvements on the Lease Premises.

(D) Protective Work. Lessee agrees that, notwithstanding any other provision of this Lease, upon any event of damage or destruction to the Improvements on the Lease Premises, Lessee shall at its sole cost and expense (whether or not insurance proceeds are available therefor and whether or not Lessee terminates or intends to terminate this Lease, but subject to reimbursement from insurance proceeds if and when available) immediately take or cause to be taken such actions and undertake and complete such work as is necessary to assure the safe condition of such damaged Improvements pending the ultimate disposition of the Improvements. In any instance where Lessee may elect to terminate this Lease rather than restore such Improvements pursuant to this Section 7.6 (or 7.7 below), if Lessee does not terminate this Lease, Lessee shall restore such Improvements.

#### 7.6.3 Application of Insurance Proceeds.

(A) Evidence of Restoration Costs. If Lessee elects or is required to restore, Lessee shall furnish, or cause to be furnished to Agency and any Mortgagee, prior to commencement of Restoration, evidence satisfactory to Agency and the Mortgagee of (a) the total cost of Restoration of the damaged or destroyed Improvements on the Lease Premises, (b) any funds in addition to the insurance proceeds required for Restoration, and (c) that the amount of the insurance proceeds and such additional funds are sufficient to pay the full cost of Restoration.

(B) Trustee. Subject to Section 7.6.3(D), Net Insurance Proceeds from insurance required to be carried under Article 11.0 which are received by Lessee on account of any damage to or destruction of the Lease Premises or the Improvements thereon, or any portion thereof shall be paid to the Mortgagee holding a Leasehold Mortgage on the Lease Premises or to a bank or trust company qualified to do business in the State of California as designated by Lessee, Agency and such Mortgagee. The recipient of such proceeds shall hereinafter be referred to as "Trustee." Any Trustee's fees shall be paid from the insurance proceeds. The Trustee shall pay the insurance proceeds from time to time as Restoration progresses to Lessee or to such persons as Lessee may direct, upon receipt of written request of the Lessee, accompanied by a certificate of an independent architect satisfactory to Agency and Mortgagee, stating that the amount requested has been paid or is then due and payable and is properly a part of the cost

of Restoration, that there are no mechanic's liens or similar liens for labor or materials supplied to the Restoration or that such liens have been paid in full, and that the balance of the proceeds remaining after making such payment are sufficient to pay the remaining cost of the Restoration. Upon receipt by Agency and Mortgagee of satisfactory evidence that the Restoration has been completed and that there are no mechanic's liens or other liens against the Lease Premises by reason of the Restoration, and either the period within which a lien may be filed has expired or proof has been submitted that all costs of work theretofore incurred have been paid, and that the cost of Restoration has been paid in full, the Trustee shall pay the balance of the insurance proceeds, if any, to the Lessee, or as the Lessee may have agreed in its Mortgage.

(C) Remaining Insurance Proceeds. Any insurance proceeds held by the Trustee on any termination of the Lease Term and not required to be paid to Lessee pursuant to Sections 7.6.3(A) or (B) shall be paid first to the expenses of clearing the Lease Premises of any rubble; then next to the Lessee and/or its Mortgagee as their interests may appear.

(D) Minimum Limits. If the Net Insurance Proceeds received by Lessee as a result of damage and destruction to the Improvements on the Lease Premises are less than Three Hundred Thousand Dollars (\$300,000), the provisions of this Section 7.6.3 shall not apply, and Lessee may retain the Net Insurance Proceeds and apply the same to the cost of Restoration, if required, pursuant to this Section 7.6.

7.6.4 Lessee's Elections. Notwithstanding any other provision in Sections 7.6 and 7.7, if, during the first sixty-five (65) Lease Years, (i) the stores on both Major Tracts are damaged and destroyed, and neither Major is required to restore its store under its respective lease with the Agency, and each Major notifies Lessee of its election not to restore and thereafter Operate its store within the time set forth in the REA, (ii) if the stores on both Major Tracts are not damaged or destroyed, but neither Major is Operating its store at the time of the damage and destruction, or (iii) (a) the store on one Major Tract is damaged and destroyed at the time of the damage or destruction to the Improvements, and such Major is not required to restore its store under its lease with Agency, and such Major notifies Lessee of its election not to restore and thereafter Operate, and (b) the Major leasing the other Major Tract is not Operating its store, then Lessee shall not be obligated to restore the Improvements on the Lease Premises and may terminate this Lease in accordance with Section 7.6.2(B). If (i) the Major stores on both Major Tracts are damaged and destroyed, but only one Major either is required to restore its store under its lease with the Agency

or elects within the time set forth in the REA to restore and thereafter Operate its store, (ii) neither of the stores on the Major Tracts are damaged or destroyed, but only one of the Majors is Operating its store at the time of the damage and destruction, or (iii) (a) the store on one Major Tract is damaged and destroyed, and such Major is not required to restore its store under its lease with the Agency, and such Major notifies Lessee of its election not to restore and thereafter Operate, and (b) the Major leasing the other Major Tract is Operating its store, then Lessee shall only be obligated to restore the Improvements on the portion of the Lease Premises located "immediately adjacent" to the Major Tract of the Major who is restoring and thereafter intends to Operate its store, or whose store is Operating. For purposes of this Lease, the term "immediately adjacent" shall refer to the portion of the Lease Premises extending from De La Guerra Place to the Major Tract of the restoring or Operating Major. Lessee shall have the right to terminate this Lease with respect to the remainder of the Lease Premises in accordance with Section 7.6.2(B).

7.7 Damage or Destruction During Final Years of Term. Notwithstanding Section 7.6 to the contrary, in the event of major damage or destruction to the Improvements on the Lease Premises during the last five (5) Lease Years of the Lease Term, Lessee shall have the election to restore any or all such Improvements pursuant to Section 7.6, or to terminate this Lease with respect to any or all of the Lease Premises, provided that Lessee, in the event it elects to terminate this Lease, complies with all of the following conditions:

(a) Lessee shall give Agency notice of termination as a result of such damage or destruction within forty-five (45) days after settlement of insurance proceeds, but in any event within one hundred eighty (180) days after the event causing such damage or destruction;

(b) Lessee shall pay to Agency Annual Participation Rent prorated to the date of such termination, and all additional rent payable to that same date;

(c) Lessee transfers to Agency the Net Insurance Proceeds resulting from the casualty (not including business interruption or rental loss, personal property or Trade Fixtures insurance proceeds or other proceeds compensating Lessee for its property or other rights related to the Lease Premises other than the leasehold estate); and

(d) Lessee shall deliver possession of the Lease Premises or portion thereof, to the Agency free and clear of all claims by or through Lessee and shall quitclaim all right, title and interest in the Lease Premises or portion thereof and the remaining Improvements applicable thereto, if any,



subject to any and all rights which may survive termination pursuant to the REA. In the event this Lease terminates under this Section 7.7 as to a portion of the Lease Premises, the Base Amount shall be reduced by the percentage that the gross leasable area in the Lease Premises after the damage or destruction bears to the gross leasable area in the Lease Premises prior to the damage or destruction (i.e., the Base Amount shall be multiplied by a fraction, the numerator of which is the gross leasable area in the Lease Premises after the damage or destruction and the denominator of which is the gross leasable area in the Lease Premises prior to the damage or destruction to arrive at the Base Amount after such damage or destruction). Annual Participation Rent Minimum shall be similarly reduced.

Major damage or destruction to the Improvements on the Lease Premises as used in this Section 7.7 means such damage or destruction that the cost of Restoration will exceed twenty-five percent (25%) of the full insurable value of the Improvements on the Lease Premises.

7.8 Faithful Performance and Labor and Material (Payment) Bonds; Indemnification; Nonresponsibility Notices.

Lessee agrees to hold Agency free and harmless, and to indemnify Agency against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Lease Premises and the Improvements and the cost of defending against such claims, including reasonable attorney's fees.

Except as set forth below, Lessee agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials and faithful performance for construction of the Improvements on the Lease Premises. Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor. Said bonds must first be approved in writing as to content and form by Agency. Agency shall not unreasonably withhold such approval. Lessee shall, prior to commencement of construction, deliver to Agency a certificate or certificates from the bonding company(s) issuing the aforesaid bonds, naming Agency as an obligee thereunder.

Except as set forth below, the foregoing provisions of this Section 7.8 shall be applicable to construction, repairs or alterations to the Improvements on the Lease Premises at all times during the Lease Term.

Agency agrees to eliminate the requirement for any such bonds if either (i) Agency is reasonably satisfied with the financial responsibility of the contractor and Lessee can



reasonably demonstrate its source of funds for such construction through loan commitments or otherwise, including net insurance proceeds or condemnation awards, or (ii) Lessee meets the requirements for self-insurance under Section 11.4 hereof. In any event, no bonds shall be required by Agency for any construction, repairs or alterations where the costs thereof are less than Five Hundred Thousand Dollars (\$500,000), which sum shall be increased annually by an amount equal to the percentage change in construction industry costs from completion of the initial Improvements until the date of the construction, alteration or repair as published by the Engineering News Record, or such similar construction industry index as the parties shall agree in the event such information is not available in the Engineering News Record or such publication is no longer published.

Agency shall have the right to post and maintain on the Lease Premises and the Improvements any notices of nonresponsibility provided for under applicable law.

#### 7.9 Damage or Destruction To Parking.

Any damage or destruction to the Onsite Appurtenant Parking and Offsite Appurtenant Parking shall be restored and repaired in accordance with the REA and Parking Covenants.

### ARTICLE 8.0 ASSIGNMENT, SUBLETTING, TRANSFER

#### 8.1 Warranty Against Speculation.

Lessee hereby represents and warrants that this Lease, the construction of the buildings, and its other undertakings pursuant hereto, are, and will be used for the purpose of redevelopment of the Lease Premises and not for speculation in land holding. Lessee further recognizes that:

(a) The importance of the redevelopment of the Lease Premises to the general welfare of the community; and

(b) The substantial financing and other public aids that have been made available by law and by the Agency for the purpose of making such redevelopment possible; and

(c) The fact that a change in ownership or control of Lessee or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of Lessee or the degrees thereof, is for practical purposes a transfer or disposition of the Lease Premises; and

(d) The Lease Premises are not to be acquired or used for speculation, but only for development by Lessee in accordance with this Lease.

Notwithstanding the above, a sale or assignment by Lessee of the Lease Premises to a third party or a change in control or ownership of Lessee after Agency has delivered a Certificate of Completion for the Lease Premises in accordance with Section 4.9 hereof shall not be deemed a breach of the foregoing warranty and representation.

## 8.2 Prohibition Against Transfer.

### 8.2.1 General Provisions.

(A) Consent of Agency. Except as permitted by this Lease, Lessee shall not, assign or attempt to assign this Lease or any right herein, nor make any total or partial sublease, sale, transfer, conveyance or assignment of the whole or any part of the Lease Premises or the Improvements thereon, without the prior written consent of Agency, which consent shall not be unreasonably delayed or withheld. This provision shall not be deemed to prevent the (i) granting of easements or permits to facilitate the development of the Lease Premises, (ii) subleasing of all or any part of the Lease Premises or of the Improvements on the Lease Premises pursuant to Article 5.0, (iii) granting any security interests expressly described in this Lease for financing the acquisition, development and construction of Improvements on the Lease Premises or otherwise as provided in Article 9.0, or (iv) any sale and leaseback entered into in connection with the financing of construction of the Improvements on the Lease Premises or otherwise as provided in Article 9.0.

(B) Qualifications of Lessee. The qualifications and identities of Lessee, its partners and principals are of particular concern to Agency. Lessee further recognizes that it is because of such qualifications and identities that Agency is entering into this Lease with Lessee. No voluntary or involuntary successor in interest of Lessee shall acquire any rights or powers under this Lease except as expressly set forth in the Lease.

(C) Association With Other Entities. Notwithstanding any other provisions hereof, Lessee reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of acquiring and developing the Lease Premises, or portions thereof, provided that Lessee will remain fully responsible to Agency for the performance of this Lease as provided herein, and further provided that the Agency agrees that such joining or associating does not alter the responsibilities of the Lessee.

(D) Changes in Lessee. During the Lease Term, Lessee shall promptly notify Agency of any and all changes in

the identity of the general partners of Lessee, or in the general partners of JMB or PNA, or of a material change in the degree of such general partner's interest in their respective partnerships. Except as provided in this Lease, if, prior to the issuance of the Certificates of Completion for the Improvements to be constructed on the Lease Premises, there is any significant change (voluntary or involuntary), in the membership, management or control of Lessee (other than such changes occasioned by the death or incapacity of an individual) that has not been approved by Agency at the time of such significant change, such change is prohibited and shall constitute a Default under Section 13.3 below. Notwithstanding the foregoing, a change in membership, management or control of Lessee shall not be deemed to have occurred prior to the issuance of the Certificate of Completion so long as either a "JMB Entity" or a "Reininga Entity" or any combination thereof retains control of at least fifty-one percent (51%) of Lessee prior to the issuance of the Certificate of Completion. As used herein, "JMB Entity" means: JMB, JMB Realty Corporation, a Delaware corporation ("JMB Realty"); the shareholders of JMB Realty (a privately held company) ("JMB Shareholders"); any direct or indirect subsidiary of JMB Realty and any entity in which JMB Realty or the shareholders of JMB Realty own fifty percent (50%) or more of the voting stock (a "JMB Subsidiary"); JMB/Federated Realty Associates, Ltd. or Center Partners, Ltd; any real estate investment trust in which JMB Realty or any JMB Subsidiary is a manager or investment advisor, including without limitation, JMB Realty Trust, Endowment and Foundation, Realty, Ltd-JMB-I and Endowment and Foundation Realty, Ltd-JMB-II; any common law trust, corporation, or common fund in which JMB, a JMB Subsidiary or other affiliate of JMB Realty is an advisor or investment manager; or any general or limited partnership in which one or more of the Persons specified above retains control as a general partner, or any other entity which, directly or indirectly is controlled by, or under common control with, one or more of the Persons specified above.

As used herein, a "Reininga Entity" means Paseo Nuevo Associates, John H. Reininga, Jr. and or Alan M. Roodhouse, individually, any member of the families of John H. Reininga, Jr. and/or Alan M. Roodhouse, any trust for the benefit of such families or the estates of John H. Reininga, Jr. and/or Alan M. Roodhouse, any general or limited partnership in which one or more of the Persons specified above retains control as a general partner and any other entity which, directly or indirectly, is controlled by or under common control with, one or more of the Persons specified above.

Notwithstanding any other provision of this Lease, (i) general partners of Lessee, JMB or PNA may withdraw, and new general partners may be admitted to Lessee, JMB and PNA, (ii) JMB may transfer its interest in Lessee to a JMB Entity, (iii)

PNA may transfer its interest in Lessee to a Reininga Entity, and (iv) limited partners may withdraw from or be admitted to PNA, in each case without the consent of Agency, provided that at all times prior to the issuance of a Certificate of Completion for the Improvements to be constructed on the Lease Premises, either a JMB Entity or a Reininga Entity is a general partner of Lessee.

In the absence of specific written agreement by the Agency, no unauthorized sublease, sale, transfer, conveyance or assignment of the Lease Premises, or portion thereof, or approval thereof by the Agency, shall be deemed to relieve the Lessee or any other party from any obligations under this Lease.

(E) Assignment in Whole. Lessee shall only convey, assign, or transfer the Lease Premises and Lessee's rights therein as a whole and is not permitted to subdivide the Lease Premises and its rights for the duration of the Lease without the prior written approval of Agency; provided, however, nothing shall prohibit Approved Leases as herein permitted.

(F) Conditions. Lessee's right to make an assignment shall be subject to compliance with the following further conditions:

(1) No Default. At the time of such assignment, this Lease shall be in full force and effect and either no Default (as defined under Section 13.3 below) then exists or no Default will exist upon consummation of the assignment.

(2) Assumption. The assignee shall have executed an express assumption of the obligations and liabilities of Lessee under this Lease from and after the date of delivery and recording of the assignment and there shall have been delivered to Agency at the time of the request for such assignment a photocopy of such assumption. The assignment shall include the then unexpired balance of the Lease Term and any other rights arising under this Lease with respect to which such assignment is to be operative.

(3) Net Worth of Assignee. The assignee shall have a Net Worth equal to at least Six Million Dollars (\$6,000,000) ("Net Worth Minimum"), which Net Worth Minimum shall be increased on the date that is five (5) years after the first day of the first calendar year following the Base Year, and on the same date every fifth (5th) year thereafter ("Adjustment Date") by an amount equal to the percentage change in construction industry costs, from the first day of the calendar year following the Base Year until the applicable Adjustment Date, as published by the Engineering News Record,

or such similar construction industry index as the parties shall agree in the event such information is not available in the Engineering News Record or such publication is no longer published. Net Worth is to be evidenced by a statement of financial condition as of a date not more than three hundred sixty (360) days prior to the date of assignment which is accompanied either by an opinion of a certified or a chartered public accountant or by a certificate by the chief financial or accounting officer of the assignee that it fairly represents the financial condition of the assignee. In the event Lessee agrees to remain liable under this Lease from and after the effective date of such assignment and to guaranty the obligations of the assignee under this Lease, the Net Worth standard set forth in this Section 8.2.1(F)(3) shall not apply to such assignee.

(4) Operation and Management Experience. With respect to assignments after the issuance of the Certificate of Completion referred to in Section 4.9, the assignee shall itself have experience in the operation and management of a retail center or of real estate of the type and character similar to the Improvements located on the Lease Premises proposed to be the subject of such assignment, or shall agree and covenant as an additional obligation under the Lease to at all times cause such Improvements to be operated and managed by a person who is experienced in managing and operating real estate of the type and character similar to such Improvements. However, for purposes of this Section 8.2.1(F)(4), neither the financial terms of the assignment, except to the extent, if any, that they may affect the efficient operation and management of the real estate and Improvements, nor the credit standing or financial responsibility of the assignee (except only as provided in this subsection 8.2.1(F)) shall be considered by Agency in determining whether the foregoing conditions have been satisfied. Lessee and such assignee shall deliver to Agency a statement or certificate specifying in reasonable detail the information which shall enable Agency to make the determination as to whether the conditions of this Section 8.2.1(F)(4) have been satisfied.

(G) Permitted Assignments. The foregoing provisions regarding assignments, together with the provisions of subsection 8.2.1(H), below, shall under no circumstances be deemed to apply to the transfer or assignment of any equity participation interest or other interest to an Institutional Investor or to the giving of any Mortgage by Lessee, its successors or assigns, on the leasehold interest created hereby or on the Improvements, to secure a loan; nor shall they apply to any subsequent transfers or assignments by any Institutional Investor of any equity participation interest acquired as referred to above, or to a Mortgagee or other Person who shall acquire Lessee's interest in this Lease as a result of a sale under any such Mortgage pursuant to a judg-

ment of foreclosure and sale, or through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, provided, however, that such transferee shall comply with the provisions of Section 8.2.1(F)(2) hereof, subject to the provisions of Article 9.0 below, and any such Institutional Investor or any other lending institution or nominee or wholly owned subsidiary corporation to which such Institutional Investor may have transferred such Lease or any other lending institution which may at any time acquire such Lease, shall be relieved of any further liability under any such Lease from and after such transfer.

(H) Assignment Agreement. No assignment of any interest in the Lease made with Agency's consent or as herein otherwise permitted shall be effective until there shall have been delivered to Agency an executed counterpart of such assignment or other transfer document containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease from the effective date of the assignment to the end of the Lease Term hereof.

(I) Release of Lessee. Upon the making of an effective assignment of any interest in the Lease hereunder and the delivery by Lessee to Agency of an executed counterpart of such assignment containing the agreement of the assignee to assume the obligations of this Lease as aforesaid, Lessee shall be released and relieved of all further liability under this Lease with respect to that portion of its leasehold interest being assigned, from and after the effective date of such assignment, and each subsequent assignee, upon making a further assignment in compliance with the foregoing conditions, shall be released and relieved of all further liability under this Lease from and after the effective date of such further assignment. No release of Lessee or any assignee from liability herein shall relieve any guarantor except to the extent the guarantee shall so provide or shall be limited in its scope to the obligations of the particular holder of Lessee's interest. Such release shall be self-operative, provided, however, that Agency, at the written request of the assigning lessee, shall within ten (10) business days after written request therefor certify in writing to the fact of such release upon compliance by the Lessee with the conditions of this Section 8.2.1.

(J) Further Assignments. The consent by Agency to an assignment shall not in any way be construed to relieve Lessee from obtaining the express consent in writing of Agency to any further assignment if required by the terms of this Lease.

(K) Notice of Consent. Whenever the consent of Agency is required under this Article 8.0, Agency shall deliver to Lessee such consent, in recordable form, or a written notice of objection to the assignment within twenty (20) days of the request by Lessee. Failure to deliver such consent or written notice of objection within such twenty (20) day period shall be deemed to be a consent by Agency, but in no event shall such failure relieve Agency of its obligation to timely deliver such consent or written notice of objection. Lessee shall not record any assignment agreement prior to the date on which Agency shall have given its consent or shall have been deemed to have given its consent, as applicable.

#### 8.2.2 Assignments By Lessee.

(A) Prior to Certificate of Completion. Prior to the issuance of the Certificate of Completion referred to in Section 4.9, Agency shall be obligated to grant its approval to an assignment by Lessee only if (i) Lessee has complied with the provisions of Sections 1.7.2(B), 8.2.1. and 8.2.2(B)(1)(ii), and (ii) such assignment is deemed by Agency to be in the best interests of the City and Agency to carry out the purposes of the Redevelopment Plan and this Lease and the proposed assignee has, in the opinion of Agency, the financial capability and overall competence to develop and operate the assigned obligations and the Lease Premises.

#### (B) After Certificates of Completion.

(1) Establishment Year and Succeeding Year. Through the Establishment Year and for one (1) year thereafter, Agency shall be obligated to grant its approval to an assignment by Lessor only if (i) Lessee has complied with the provisions of Sections 8.2.1(E) through (J), and (ii) a JMB Entity and/or a Reininga Entity, or any combination thereof, shall own not less than five percent (5%) of the assignee entity and retains management of the operation and maintenance of the Lease Premises.

(2) Remainder of Lease Term. Following the end of the year immediately following the Establishment Year, Agency shall be obligated to grant its approval to an assignment provided Lessee has complied with the provisions of Sections 8.2.1(E) through (J) and there shall be no requirement that a JMB Entity or a Reininga Entity have any minimum ownership in or control of the transferee.

(3) Permitted Assignments. Notwithstanding anything contained in Sections 8.2.1 and 8.2.2, after the issuance of the Certificate of Completion in accordance with Section 4.9, Lessee shall not be required to obtain the approval of Agency with respect to an assignment (i) to a



corporation, partnership, joint venture, syndicate or other group controlled by or subject to the same control as, the assignor or the transferor, provided the assignor or transferor remains liable; (ii) to a member or members of the family of the assignor or transferor provided the assignor or transferor remains liable; or (iii) in the case of devolution through death. Lessee and such assignee shall deliver to Agency a certificate or other statement specifying in reasonable detail the information which shall enable Agency to make the determination as to whether the conditions of this subsection have been complied with.

For the purpose of Section 8.2.2(B)(3) above, "control" of any corporation shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the voting power for the election of the board of directors of such corporation, and "control" of a partnership, joint venture, syndicate or other group shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the general partners' interest in such partnership or of the total interest in such joint venture, syndicate or other group, and members of the family of any assignor or transferor shall include his spouse, grandparents, parents, brothers and sisters, nephews and nieces, and issue, a legally adopted child being treated as a child by blood.

Nothing herein shall be construed as prohibiting any of the transfers permitted under Section 8.2.1(D) above.

## ARTICLE 9.0 MORTGAGES

### 9.1 Leasehold Mortgages.

#### 9.1.1 General Provisions.

From time to time during the Lease Term, Lessee shall have the right to mortgage, pledge, deed in trust, assign rents, issues and profits and/or collaterally (or absolutely if required by any lender) assign its interest in this Lease for the purposes of security, or the leasehold estate created by any sublease, or otherwise encumber this Lease, and/or the interest of Lessee hereunder, in whole or in part, and any interests or rights appurtenant to this Lease including but not limited to Lessee's interests in the REA and Parking Covenants, and to assign or pledge the same as security for any debt (the holder of any such mortgage, pledge or other encumbrance, and the beneficiary of any such deed of trust being hereafter referred to as "Mortgagee" and the mortgage, pledge, deed of trust or other instrument hereafter referred to as "Leasehold Mortgage"), upon and subject to each and all of the following terms and conditions. As used in this Article 9.0, the leasehold estate and Lessee's interest



in the Lease Premises shall include such Appurtenant Interests to the extent given as security.

(A) Terms of Leasehold Mortgages. Leasehold Mortgages may be made for any purposes and for any amounts and upon any terms including term of the loan, interest rates, payment terms including balloon or amortizing loans, prepayment privileges or restrictions as desired by Lessee, except as expressly otherwise provided by the provisions of this Article 9.0. Nothing in this Article 9.0 is intended to restrict the rights of Lessee or, a Mall Tenant, concerning equipment leasing or financing as provided in Section 7.1.3.

(B) Construction Period Limitation. Between the Effective Date of this Lease and the date of substantial completion of the initial Improvements to be constructed pursuant to the REA for the Lease Premises (the "Construction Period"), Leasehold Mortgages shall be limited in purpose to and shall not exceed the amount necessary and appropriate to develop the Improvements on the Lease Premises, to acquire and install equipment and fixtures thereon and costs and expenses associated with the construction of any offsite improvements ("Project Costs") and may include the amount of the Developer Loans. "Project Costs" for the Lease Premises shall include all amounts for the items and matters defined as Project Costs in Exhibit "8" to this Lease. "Developer Loans", as used herein, shall refer to those certain loans in the aggregate principal amount of Four Million Dollars (\$4,000,000) made by Developer to Agency to partially finance the Agency's cost of acquiring the Lease Premises pursuant to the DDA. Upon and after the expiration of the Construction Period for the Lease Premises, the limitation contained in this subsection 9.1.1(B) shall no longer apply. It is expected that Lessee may obtain a Leasehold Mortgage during the Construction Period for the Lease Premises in the amount of the Project Costs for the Lease Premises described in Exhibit "8" (including the Developer Loan).

(C) Property Covered. During the Construction Period, Leasehold Mortgages shall cover no interest in any real property other than Lessee's interest in the Lease Premises and Improvements, the REA, and the Parking Covenants, or some portion thereof; provided, however, that Lessee's Leasehold Mortgage may also cover and include the Ott and Parma Rehabilitation Parcels. Any such permitted Leasehold Mortgage shall be without subordination of the fee simple title or reversionary interest of Agency, except as permitted in Article 10.0 hereof.

(D) Delivery to Agency. No such Leasehold Mortgage shall be binding upon Agency in the enforcement of its rights and remedies herein and by law provided, unless and until a certified copy of the original thereof bearing the

date and book and page of recordation thereof and a certified copy of the original note secured by such Leasehold Mortgage has been delivered to Agency together with written notice of the address of the Mortgagee to which notices may be sent; and in the event of an assignment of such Leasehold Mortgage, such assignment shall not be binding upon Agency unless and until a certified copy thereof bearing the date and book and page of recordation together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Agency.

(E) Number of Leasehold Mortgages. Any number of permitted Leasehold Mortgages shall be outstanding at any one time on all or any portion of the Lease Premises and the Improvements.

(F) Insurance Proceeds and Condemnation Awards. The Leasehold Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease.

(G) Purchase Money Mortgages. As used herein, Leasehold Mortgages shall include, without limitation, purchase money Leasehold Mortgages which may secure, in whole or in part, the purchase price payable in connection with a permitted conveyance, assignment or transfer described in this Article 9.0. Except for such purchase money Leasehold Mortgages, any permitted Leasehold Mortgages are to be originated only by Institutional Lenders at the time the Leasehold Mortgage is originated.

(H) Subject to Lease. All rights acquired by a Mortgagee under a Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Agency hereunder, none of which covenants, conditions and restrictions is or shall be waived by Agency by reason of the giving of such Mortgage, except as expressly provided in this Article 9.0 and in Article 10.0. Notwithstanding any foreclosure of any such Mortgage, Lessee shall remain liable for the payment of the rent reserved in this Lease and the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee, subject, nevertheless, to the limitation on Lessee's liability set forth in Section 13.10.

(I) Termination of Lease. If Lessee encumbers the Lease Premises by way of a Leasehold Mortgage as permitted herein, and should Agency be advised in writing of the name and address of the Mortgagee, then this Lease shall not be terminated or cancelled on account of any Default by Lessee until Agency shall have complied with the provisions of

Sections 9.2 and 9.3 as to the Mortgagee's rights to cure and to obtain a new lease.

(J) Nothing contained in this Article 9.0 shall be construed to authorize the encumbrance of Agency's fee title to the Lease Premises, and Lessee shall not, by any act or deed, cloud Agency's fee title to the Lease Premises or Agency's interest as Lessor under this Lease.

9.1.2 Refinancing.

On and after the expiration of the Construction Period for the Improvements on the Lease Premises, Lessee may obtain financing in excess of the Project Costs for the Lease Premises subject to the following restrictions and requirements:

(A) No Subordination. Agency's fee simple estate in the land will not be subordinated to any financing or refinancing by Lessee except as provided in Article 10.

(B) Amount of Refinancing. The amount of any refinancing, in excess of the Project Costs, shall be limited so that the debt service coverage ratio of annual Projected Net Operating Income to annual debt service (principal and interest payments exclusive of so-called balloon payments) shall not be less than one to one (1:1). The limitation herein regarding such income to debt service requirement shall not apply to financings or refinancings up to the Project Costs after completion of the Improvements on the Lease Premises.

(C) Participation Rent Debt Service. The Participation Rent Debt Service deducted for purposes of calculating the Annual Participation Rent Minimum payable to Agency described in Article 3.0 (also referred to in this Lease as "Senior Mortgage Payments") shall be the annual debt service on ninety-five percent (95%) of Project Costs amortized in level monthly payments over a thirty (30) year period at rate of interest equal to ten percent (10%).

(D) Priority of Annual Participation Rent. The Annual Participation Rent with respect to Leasehold Mortgages in amounts in excess of the unamortized Project Costs for the Lease Premises will rank prior to that portion of the annual debt service in excess of the Senior Mortgage Payments described in Section 9.1.2(C)(3) above.

(E) No Default. No Default then exists or, upon consummation of the refinancing no Default will exist.

### 9.1.3 Consent of Mortgagee Required.

No cancellation, surrender or modification of this Lease shall be effective without the written consent of the holder of any Leasehold Mortgage on the Lease Premises.

### 9.2 Rights and Obligations of Mortgagees.

If Lessee, or Lessee's successors or assigns, shall mortgage the Lease Premises, then, as long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

9.2.1 Consent of Mortgagee. Agency will not cancel, accept a surrender of or modify this Lease or any Appurtenant Interests in the absence of a Default by Lessee without the prior consent in writing of the Mortgagee.

9.2.2 Notice of Default. If the Mortgagee shall register with Agency its name and address in writing, no notice of default required to be made by Agency to Lessee pursuant to Section 13.3.1 below shall be deemed to have been duly given unless and until a copy thereof has been mailed to the Mortgagee by registered or certified mail at the address registered with Agency.

9.2.3 Right to Remedy. In the event Lessee shall be in Default hereunder, the Mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such Default, or cause the same to be remedied, and Agency shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by Lessee. The Mortgagee shall have ninety (90) days after the date of the notice of Lessee's Default for remedying the Default or causing the same to be remedied. Subject to the provisions of Section 9.3.2, such ninety (90) day period shall be extended if the Default is other than the payment of money and such that it is not practicable to cure within such ninety (90) day period if the Mortgagee commences such cure within said ninety (90) day period and diligently prosecutes such cure to completion; provided, however, that if the Mortgagee cannot cure the Default without acquiring possession of Lessee's interest in the Lease Premises, the Mortgagee shall have one hundred eighty (180) days after the date of the notice of Lessee's Default to commence any nonjudicial or judicial foreclosure proceeding required to obtain possession of Lessee's interest in the Lease Premises, and, except as provided below, a reasonable time period thereafter in which to diligently pursue such foreclosure proceeding to completion. Except as provided below, the Mortgagee shall have a reasonable period of time after the Mortgagee acquires possession of Lessee's interest in the Lease Premises to cure the Default. Notwithstanding the above, if the Default specified

in the notice of Lessee's Default is the failure of Lessee to construct the Improvements on the Lease Premises in accordance with Article 4.0 hereof, the Mortgagee shall have a period of one (1) year from the date the Mortgagee acquires possession of Lessee's interest in the Lease Premises, subject to the provisions of Section 4.2.2 hereof, in which to either (i) assume Lessee's obligations to construct the Improvements in accordance with Article 4.0 hereof or (ii) use diligent efforts to find a person having the qualifications set forth in Section 8.2.1(F)(4) to perform such obligations, and to commence construction of such improvements within said one (1) year period. If the Mortgagee does not assume Lessee's construction obligations hereunder, or locate a qualified person to assume such obligations and commence construction within such one (1) year period, Lessee may terminate this Lease in accordance with Section 13.4.1 hereof. Notwithstanding anything contained herein, Agency's rights with respect to Mortgagee shall be limited to termination of the Lease, and such Mortgagee shall have no personal liability for failure to complete construction in accordance with Article 4.0 hereof. Lessee hereby constitutes and appoints the Mortgagee as Lessee's agent and attorney in fact with full power, in Lessee's name, place and stead, and at Lessee's cost and expense, to enter upon the Lease Premises and the Improvements, and perform all acts required to be performed herein or in any sublease made hereunder by Lessee. No Mortgagee shall have the right to take or perform any action hereunder, under its Leasehold Mortgage or otherwise which might result in any detriment to the rights of a prior Mortgagee with respect to the same Lease or the Lease Premises.

9.2.4 No Termination. While any Leasehold Mortgage remains unsatisfied of record, and an event or events shall occur which shall entitle Agency to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination under this Lease (but in no event prior to the date Mortgagee is entitled to cure such Default as provided in section 9.2.3 above) such Mortgagee shall have paid to Agency all rent and additional rent and other payments herein provided for then in Default, and shall have complied or shall be engaged in complying with all the other requirements of this Lease, if any, then in Default, and which such Mortgagee is capable of complying with, then Agency shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.

9.2.5 Subrogation. If Agency elects to terminate this Lease pursuant to any right of termination resulting from Lessee's Default under this Lease, then any Mortgagee, in addition to all other rights herein granted such Mortgagee, shall have the right to be subrogated to any and all rights of Lessee with respect to curing of any Default and

shall also have the right to postpone and extend the specified date for termination or expiration of this Lease fixed by Agency in a notice given pursuant to applicable provisions of this Lease as set forth in Section 9.3.2.

9.2.6 Actions by Mortgagee. Any payment to be made or action to be taken by a Mortgagee hereunder as a prerequisite to obtaining a new lease or keeping this Lease in effect shall be deemed properly to have been made or taken by the Mortgagee if such payment is made or action taken by a permitted nominee, agent or assignee of the right of such Mortgagee.

9.2.7 Condemnation Proceedings. The parties hereto shall give the Mortgagee notice of any condemnation proceedings affecting the Lease Premises or any rights or interests appurtenant to this Lease. The Mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the Mortgagee may be made such party or intervenor.

9.2.8 Liability. No Mortgagee nor any owner of the Leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or shall have been derived immediately from any holder thereof shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until such time as the Mortgagee becomes the owner or in possession of the Leasehold estate or the Lease Premises, as applicable, and then only for as long as it remains the owner or in possession of the Leasehold estate or the Lease Premises, as applicable. Upon any assignment of this Lease by any owner of the Leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Agency a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of Lessee and agree to perform and observe all covenants and conditions and provisions in this Lease as they are applicable to Lessee.

9.2.9 Notice to Mortgagee. In the event of the termination of this Lease prior to the expiration of the Lease Term due to Default of Lessee or operation of law, Agency shall mail by registered or certified mail to the Mortgagee written notice of such termination or expiration, together with a statement of any and all sums which would at that time be due under this Lease then known to Agency. Such Mortgagee shall thereupon have the option to obtain a new lease

(including Lessee's interest in the Appurtenant Interests), in accordance with and upon the following terms and conditions:

(A) New Lease. Upon the written request of the Mortgagee within sixty (60) days after service of the aforementioned notice of termination, Agency shall enter into a new lease of the Lease Premises (including Lessee's interest in the Appurtenant Interests), with such Mortgagee, or its designee, as provided in this section 9.2.9(A).

(B) Terms of New Lease. Such new lease shall be effective as of the date of termination or expiration of this Lease and shall be for the remainder of the Lease Term at the rent and additional rent and upon the agreements, terms, covenants and conditions thereof (subject nevertheless to Article 10.0). The new lease shall be subject to all of the terms and conditions of the REA. Any such new lease entered into with the Mortgagee shall have the same priority as Lessee hereunder as between such Mortgagee (as the lessee thereunder) and the holder of any lien or encumbrance on the fee interest of the Lease Premises. Upon the execution of such new lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for the termination or expiration as aforesaid (subject nevertheless to Article 10.0) and shall fully otherwise remedy any existing Defaults under this Lease, and shall pay all expenses, including but not limited to reasonable attorneys' fees, court costs and disbursements incurred by Agency in connection with such Defaults and termination, the recovery of possession of the Lease Premises and the preparation, execution and delivery of such new lease, except that with respect to any such Default which cannot be cured by such lessee until it obtains possession, such lessee shall have ninety (90) days after it obtains possession to cure such Default, or if such Default cannot be cured within such ninety (90) day period to commence such cure within said ninety (90) day period and to diligently prosecute the same to completion; provided, however, that nothing contained in this Section 9.2.9 shall alter the time period in which a defaulting construction of Improvements under Article 4.0 can be cured.

9.2.10 Senior Leasehold Mortgage. Anything herein contained to the contrary notwithstanding, the provisions of this Section 9.2 shall inure only to the benefit of the holders of Leasehold Mortgages. If the holders of more than one such Leasehold Mortgage shall make written requests upon Agency in accordance with this Lease, the new lease (as provided for in subsection 9.2.9 above or in Section 9.3.4) shall be entered into pursuant to the request of the holder whose Leasehold Mortgage shall be prior in lien thereto and thereupon the written requests for a new lease of each holder of a Leasehold Mortgage junior in lien shall be and be deemed

to be void and of no force or effect. In the event of any dispute or disagreement as to the respective priorities of any such Leasehold Mortgages, the certification as to such priorities by a reputable title insurance company doing business in California shall be conclusively binding upon all the parties concerned.

### 9.3 Agency's Forbearance and Right to Cure Defaults on Leasehold Mortgages.

#### 9.3.1 Notice.

In the event that Lessee's interest under this Lease is subject to any Leasehold Mortgage, Agency will give to Mortgagee at such address as is specified by the Mortgagee in accordance with Section 9.2 hereof, a copy of each notice or other communication with respect to any claim that a Default exists or is about to exist from Agency to Lessee hereunder at the time of giving such notice or communication to Lessee, and Agency will give to Mortgagee a copy of each notice of any rejection of this Lease by any trustee in bankruptcy of Lessee. Agency will not exercise any right, power or remedy with respect to any Default hereunder, and no notice to Lessee of any such Default and no termination of this Lease in connection therewith shall be effective, unless Agency has given to Mortgagee written notice or a copy of its notice to Lessee of such Default or any such termination, as the case may be.

#### 9.3.2 Forbearance by Agency.

So long as there is a Leasehold Mortgage on the Lessee's Leasehold estate, Agency will not exercise any right, power or remedy with respect to any Event of Default hereunder (other than to seek monetary relief from the Lessee or equitable relief to preserve the Lease Premises and the Improvements, if permitted under Section 9.3.3), if:

(A) Monetary Default. In the case of a Default in the payment of Annual Participation Rent, to which Mortgagee is subordinate as provided in Article 10.0 Mortgagee shall, within ninety (90) days after giving of the notice by Agency that such Default exists, pay such Annual Participation Rent to which Mortgagee is subordinate; or

(B) Non-Monetary Default. In the case of any other Default (except a Default in construction of Improvements as specified in Section 9.2.3), (i) Mortgagee, within one hundred eighty (180) days after the date of notice that such Default exists, gives written notice to the Agency of Mortgagee's intention to foreclose its Mortgage, (ii) Mortgagee, within such same one hundred eighty (180) day period after the giving of such notice by Agency, diligently



commences and completes foreclosure or similar proceedings under the Mortgage for the purpose of acquiring Lessee's interest in this Lease, (provided, however, that if the Mortgagee is restrained by a court of competent jurisdiction or by reason of any law, regulation, order or rule from so proceeding, the time periods set forth above shall be tolled and if the Default with respect to which such Event of Default was declared is cured, the Mortgagee may discontinue such proceedings), and (iii) either Mortgagee or any other purchaser or transferee of Lessee's interest under this Lease, whether at a judicial foreclosure, trustee's sale or by deed-in-lieu of foreclosure within ninety (90) days after the acquisition of such interest, cures all Defaults hereunder susceptible of being cured by Mortgagee or such purchaser other than obligations of Lessee to satisfy or discharge any lien, charge or encumbrance junior in priority to the lien of the Leasehold Mortgage, or if such Default cannot be cured within such ninety (90) day period, such cure is commenced and diligently prosecuted within said ninety (90) day period (except a default in construction of Improvements may be cured by a Mortgagee within the time period set forth in Section 9.2.3 hereof); provided that neither Mortgagee nor any such purchaser or transferee nor any successor shall, in order to preserve the Leasehold estate, be obliged to pay any Annual Participation Rent accrued prior to such transfer; and, provided further, that Agency shall in no event be required to forbear hereunder unless Mortgagee shall, within ninety (90) days after the giving of notice by Agency, pay all Annual Participation Rent to which Mortgagee is subordinate under Article 10.0 and in respect of which there exists an Event of Default.

#### 9.3.3 Performance on Behalf of Lessee.

In the event that Lessee shall fail to make any payment or perform any act required hereunder to be made or performed by Lessee, then Agency or Mortgagee may, but shall be under no obligation to, after such notice to Lessee, if any, as may be reasonable under the circumstances, but except for life-threatening emergencies not less than twenty (20) days' notice, make such payment or perform such act with the same effect as if made or performed by Lessee. Nothing herein shall limit the right of Mortgagee to take action or make a payment if permitted under its Leasehold Mortgage, except that a Mortgagee may not cure a default in construction of Improvements hereunder except in accordance with Section 9.2.3 hereof. Entry by Agency or Mortgagee upon the Lease Premises for any purpose shall not waive or release Lessee from any obligation or Default hereunder (except in the case of any obligation or Default which shall have been fully performed or cured by Mortgagee). Lessee shall reimburse Agency (with interest at the Reference Rate) or Mortgagee (with interest as provided in the Leasehold Mortgage) for all sums so paid by

Agency or Mortgagee and all costs and expenses incurred by Agency and Mortgagee in connection with the performance of any such act. Nothing contained herein shall permit Agency to cure any Default under a Leasehold Mortgage or to construct Improvements on the Lease Premises.

#### 9.3.4 New Lease.

In case (a) Lessee's interest hereunder shall be sold, assigned (other than for security purposes) or otherwise transferred pursuant to the exercise of any right, power or remedy by Mortgagee or pursuant to judicial proceedings, and satisfactory provision for indemnification of Agency against any adverse claims arising out of or with respect to this Lease shall have been made, (b) no Annual Participation Rent to which Mortgagee is subordinate as provided in Article 10 shall then be due and payable to Agency, (c) Mortgagee or any other purchaser of Lessee's interest hereunder shall have arranged for the correction of any Default (other than in the payment of Annual Participation Rent) susceptible of being corrected by the lessee under the new lease referred to below, and (d) this Lease shall have been terminated pursuant to the terms hereof by reason of a Default, then Agency, within ninety (90) days after receiving written request therefor and upon payment of all expenses, including, without limitation, attorneys' fees and expenses incident thereto, will execute and deliver a new lease of the Lease Premises to Mortgagee or its nominee, purchaser, assignee or transferee, as the case may be, for the remainder of the Lease Term, and, except for charges or encumbrances caused or suffered by Lessee, with the same terms as are contained herein (except that the lessee under such new lease shall be entitled to the same rights as are provided under this Lease to the Mortgagee and any purchaser, transferee and successor and with priority equal to that hereof). The lessee under the new lease shall be subject to the terms and conditions of the REA. Upon the execution and delivery of such new lease, Agency, at the expense of the new lessee, shall take such steps as shall be necessary to cancel and discharge this Lease of record and remove Lessee from the Lease Premises and the new lessee shall be deemed to be the landlord under any Approved Leases.

#### 9.3.5 Mortgagee's Transferees.

In the event the leasehold estate hereunder shall be acquired by foreclosure, trustee's sale or deed or assignment in lieu of foreclosure of a Leasehold Mortgage, the purchaser at such sale or the transferee by such assignment and its successors as holders of the leasehold estate hereunder shall not be liable for any Annual Participation Rent or other obligations accruing after its or their subsequent sale or transfer of such leasehold estate and such purchaser or transferee and its successors shall be entitled to transfer

such estate or interest without consent or approval of Agency; provided that, except as to Annual Participation Rent as provided in Article 10.0 the purchaser or transferee or successor as holder of the leasehold estate hereunder shall be liable for the payment of all Annual Participation Rent becoming due with respect to the period during which such purchaser, transferee or other successor is the holder of the leasehold estate hereunder.

#### 9.4 Nonmerger.

There shall be no merger of this Lease, or of the leasehold estate created thereby, with the fee estate in and to the Lease Premises by reason of the fact that this Lease, or the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Lease Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in this Lease or the leasehold estate, including the Mortgagee and the holder of any Leasehold Mortgage upon the fee estate in and to the Lease Premises shall join in a written instrument effecting such merger.

#### 9.5 Agency Cooperation.

Agency covenants and agrees that it will act and fully cooperate with Lessee in connection with Lessee's right to grant Leasehold Mortgages as hereinabove provided. At the request of Lessee or any proposed or existing Mortgagee, Agency shall promptly execute and deliver (i) any documents or instruments reasonably requested to evidence, acknowledge and/or perfect the rights of Mortgagees as herein provided; and (ii) an estoppel certificate certifying the status of this Lease and Lessee's interest herein and such matters as are reasonably requested by Lessee or such Mortgagees. Such estoppel certificate shall include, but not be limited to, certification by Agency that (a) this Lease is unmodified and in full force and effect (or, if modified, state the nature of such modification and certify that this Lease, as so modified, is in full force and effect), (b) all rents currently due under the Lease have been paid, and (c) there are not, to Agency's knowledge, any uncured Defaults on the part of Lessee or facts, acts or omissions which with the giving of notice or passing of time, or both, would constitute a Default. Any such estoppel certificate may be conclusively relied upon by any Mortgagee or assignee of Lessee's interest in this Lease.

#### 9.6 Enforceability.

The rights granted herein to Mortgagees shall be enforceable by them. In the event any action or proceeding is brought to enforce or interpret the provisions hereof or to

seek damages or performance or declare the rights of the parties hereto or such Mortgagees, the prevailing party including such Mortgagees, if prevailing, shall be entitled to attorneys' fees, costs and expenses.

#### 9.7 Completion of Construction.

The rights, obligations and duties of a Mortgagee with respect to a Default by Lessee in the construction or completion of construction of the initial Improvements shall be as provided in Section 21.9 of the REA. Notwithstanding the above, if a Mortgagee does not commence, or cause to be commenced, construction of the Improvements on the Lease Premises in accordance with the REA within one (1) year after acquiring title thereto, Agency may purchase the Lease Premises from the Mortgagee or such Person to whom Mortgagee may have transferred the Lease Premises upon payment to the Mortgagee or such other Person of an amount equal to the following:

9.7.1 Unpaid Debt. The amount of the unpaid debt that the Mortgage secures at the time title vests in the Mortgagee (less all appropriate credits, including those resulting from collection and application of rentals and other income received during the foreclosure proceedings);

9.7.2 Expenses. All expenses with respect to foreclosure;

9.7.3 Ownership or Management Expenses. The net expenses, if any (exclusive of general overhead) incurred by Mortgagee or such other Person as a direct result of the subsequent ownership or management of the Lease Premises (or any portion thereof, such as insurance premiums and property taxes);

9.7.4 Improvements. The costs of any improvements made by such Mortgagee or such other Person; and

9.7.5 An amount equivalent to the interest that would have accrued on the aggregate of all such above amounts had all such amounts become part of the debt secured by the Leasehold Mortgage and such Leasehold Mortgage had continued in existence to the date of payment by the Agency.

#### ARTICLE 10.0 NONSUBORDINATION OF FEE INTEREST AND ANNUAL PARTICIPATION RENT

(A) Agency's interest in the Lease Premises under this Lease is a vested landlord's reversionary interest and not just a contractual obligation of Lessee. Agency's fee title to the Lease Premises or any part thereof, including all rights and appurtenances, and the leasehold estate hereby

created, shall not be subordinate to, or pledged to the payment of, any Leasehold Mortgage, deed of trust, other security instrument or other obligation of Lessee.

(B) The Senior Mortgage Payments (described in Section 9.1.2(C)) of the Leasehold Mortgages will be senior in priority to any Annual Participation Rent. This means that (i) while such Leasehold Mortgage exists the Mortgagee would be entitled to receive its Senior Mortgage Payments before any Annual Participation Rent is payable, and (ii) if such Leasehold Mortgage is foreclosed (by judicial or trustee's sale) or there is a deed-in-lieu of foreclosure, the purchaser or transferee and its successors as owners of the leasehold estate will be entitled to receive, before any Annual Participation Rent is payable, an amount equal to the Senior Mortgage Payments which would have been due had an identical Leasehold Mortgage continued to encumber the leasehold for the remainder of the Lease Term after such foreclosure or trustee's sale or deed-in-lieu of foreclosure. Any Annual Participation Rent becoming due after recording of a Leasehold Mortgage in excess of the unamortized Project Costs for the Lease Premises shall only be junior in priority to the Senior Mortgage Payments described in Section 9.1.2(C).

#### ARTICLE 11.0 INSURANCE

##### 11.1 Amount and Kind of Insurance.

Lessee shall carry adequate insurance protecting Agency and City from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Lease Premises and the Improvements thereon by Lessee or any other person under Lessee, or any accident or fire on the Lease Premises and the Improvements thereon, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Lease Premises and the Improvements thereon in a safe condition, and which insurance will reimburse Agency and City for all its costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims, and Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Lease Premises and the Improvements thereon at the sole risk of Lessee and save Agency and City harmless from any loss or damage thereto by any cause whatsoever. The foregoing insurance shall be inapplicable for any willful act or negligent act or omission of the Agency and City, or their agents, servants or employees in the course and scope of their employment.

## 11.2 Required Insurance.

During the Lease Term, Lessee at its sole cost and expense shall:

(A) Casualty Insurance. Keep or cause to be kept a policy or policies of insurance against loss or damage to the Improvements on the Lease Premises resulting from fire, wind-storm, hail, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance shall be maintained in an amount not less than ninety percent (90%) of the full insurable value of the Improvements on the Lease Premises as defined herein in Section 11.3 (such value to include amounts spent for construction of the Improvements, architectural and engineering fees, and inspection and supervision).

(B) Public Liability Insurance. Maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Agency, City or Lessee or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities in connection with the Lease Premises, Agency, City or Lessee or their respective invitees and sublessees, or any person acting for Agency, City or Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect the Agency and City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire Lease Term in the amount of at least Five Million Dollars (\$5,000,000.00) combined single limit, naming the Agency and City, and their respective officers, employees and consultants, as additional insureds; provided, however, such insurance may be maintained in lesser limits in any Lease Year that the premium cost therefor exceeds one percent (1%) of Gross Operating Revenue at such limit (which shall be in no event less than Two Million Dollars (\$2,000,000.00)) which may be maintained at the premium cost to Lessee equal to one percent (1%) of Gross Operating Revenue. Lessee agrees that provisions of this section 11.2(B) as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, or activities

of its invitees and sublessees or the activities of any other person or persons for which Lessee is otherwise responsible.

(C) Worker's Compensation Insurance. Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure all persons employed by Lessee in connection with the Lease Premises and the Improvements thereon, and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Lease Premises and the Improvements thereon, or the operation thereof by Lessee.

### 11.3 Definition of "Full Insurable Value."

The term "Full Insurable Value" as used in Section 11.2 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the ground level and without deduction for depreciation) of the Improvements on the Lease Premises, and using the items of value set forth above, as adjusted from time to time to reflect changes in the actual replacement costs, less such deductibles as are reasonable and customary for insurance on projects of similar size and quality.

### 11.4 General Insurance Provisions.

All insurance provided under Section 11.2 of this Lease shall be for the benefit of Lessee, Agency and City, and any lender under Articles 9.0 and 10.0. Said insurance shall also be for the benefit of any Mortgagee holding a Leasehold Mortgage.

All insurance provided under Section 11.2 shall be periodically reviewed by the parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

All insurance herein provided for under Section 11.2 shall be effected under policies issued by insurers of recognized financial responsibility licensed or permitted to do business in the State of California, with a Best's Insurance Guide rating of at least A + XII.

Any insurance required to be maintained by Lessee pursuant to Section 11.2 may be taken out under a blanket insurance policy or policies covering other premises or properties, and other insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance shall specify therein, or supplemental written certification

from the insurers under such policies shall specify, the amount of insurance allocated to the coverage to be provided under Section 11.2 and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of Section 11.2.

Notwithstanding the above, Lessee may satisfy its insurance obligations under Sections 11.2(A) and (B) through a plan of self-insurance maintained from time to time by Lessee provided the self-insurance plan and Lessee comply with all of the requirements for self-insurance set forth in Section 13.14.2 of the REA.

Certificates of insurance shall provide that the insurance required to be maintained hereunder shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Agency.

Certificates of such insurance and copies of the policies issued thereunder shall be deposited with Agency, and, at least thirty (30) days prior to expiration of any such policy, certificates evidencing the renewal of such policy shall be so deposited.

#### 11.5 Failure to Maintain Insurance.

If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Agency shall have the right, at Agency's election, and without notice, to procure and maintain such insurance. The premiums paid by Agency shall be treated as additional rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

#### 11.6 Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements.

All proceeds of insurance with respect to loss or damage to the Improvements on the Lease Premises to be maintained and repaired by Lessee during the term of this Lease shall be paid to the Trustee for Restoration of the Improvements on the Lease Premises in accordance with Section 7.6.3 hereof. Any Restoration of the Improvements on the Lease Premises that modifies the original exterior elevations (including materials selection and color) or the size, bulk and scale of the Retail Center shall be made in accordance with plans and specifications approved in writing by Agency.

In the event this Lease is terminated by mutual agreement of Agency and Lessee, and the Improvements on the Lease Premises are not repaired, restored or reconstructed, subject



to rights of Mortgagees, the insurance proceeds shall be jointly retained by Agency and Lessee and shall be applied first to restore the Lease Premises to a neat and clean condition, second to payments due under this Lease from Lessee to the Agency, if any, and finally any excess shall be paid to Lessee. Notwithstanding the above, within any period when there is an outstanding Leasehold Mortgage upon the Improvements, such proceeds shall be applied first to discharge the debt secured by the Leasehold Mortgage and then for the purposes and in the order set forth above in this paragraph.

Lessee hereby waives any claim against Agency for any loss covered by insurance of the type specified in Section 11.2, to the extent such waiver would not void any such insurance policy; and Lessee, shall, if obtainable, obtain from its insurance company or companies a waiver of any right of subrogation that it may have against Agency.

#### 11.7 Indemnity.

Lessee shall indemnify and hold Agency and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively referred to in this Section 11.7 as "claim"), which may be imposed or incurred or asserted against Agency or its respective officers, agents and employees solely by reason of Agency's capacity as owner of the fee estate in the Lease Premises or other property rights reserved to Agency as lessor hereunder by reason of the following occurrences during the term of this Lease:

(a) Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Lease Premises, or any part thereof, or any alley, sidewalk, curb, vault, passageway or space adjacent thereto over which Lessee has management responsibilities or control;

(b) Any negligence or wrongful act on the part of Lessee or any of its agents, contractors, servants, employees, sublessees, operators, licensees or invitees;

(c) Any accident, injury or damage to any person or property occurring in, on or about the Lease Premises, or any part thereof, or any alley, sidewalk, curb, vault, passageway or space adjacent thereto over which Lessee has management responsibilities or control; and

(d) Any failure on the part of Lessee to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on his part to be performed or complied with.

In case any action or proceeding is brought against Agency or its officers, agents and employees by reason of any such claim, Lessee, upon written notice from Agency, shall at Lessee's expense, resist or defend such action or proceeding by counsel reasonably approved by Agency in writing. Notwithstanding the foregoing, Agency or its officers, agents and employees shall not be entitled to indemnity under the foregoing provision for any claim arising from the willful misconduct of Agency, its officers, agents and employees.

Nothing contained in this Section 11.7 is intended to conflict with any indemnity provision contained elsewhere in this Lease, or in the DDA, REA, Parking Agreement, or Parking Covenants, and in the event of any conflict between the terms of the indemnity set forth in such other agreements and this Section 11.7, the indemnity provisions set forth in such other agreements shall govern and control the rights of the Agency and Lessee. Developer's liability under this Section 11.7 shall be subject to the provisions of Section 13.10 hereof.

#### ARTICLE 12.0 EMINENT DOMAIN

##### 12.1 Lessee to Give Notice.

In case of a Taking (as defined in Article 15.0 below) of all or any part of the Lease Premises, or the commencement of any proceedings or negotiations which might result in such Taking, Lessee shall within a reasonable period of time give written notice thereof to Agency generally describing the nature and extent of such Taking or the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be.

##### 12.2 Total Taking.

In case of a Taking of the fee of the entire Lease Premises ("Total Taking"), this Lease shall terminate as of the date title vests in the condemning authority or the date the condemning authority is entitled to possession, whichever first occurs (the "Date of Taking").

##### 12.3 Substantial Taking.

A substantial taking ("Substantial Taking") shall occur if there is a Taking of a perpetual easement on or the fee interest in such a substantial part of the Lease Premises or of any interests appurtenant to this Lease as shall result, in either case, in the Lease Premises remaining after such Taking (even if Restoration were made) being unsuitable or economically unfeasible for the use to which such remaining part of the Lease Premises had been put prior to such Taking ("Substantial Taking"), as determined by Lessee in its good faith discretion. If Lessee determines that a Substantial

Taking has occurred with respect to its Tract, Lessee may, at its option, terminate this Lease by delivering written notice to Agency of such termination within sixty (60) days after the Date of Taking, as of a date specified in such notice.

#### 12.4 Partial Taking.

In case of a Taking of the Lease Premises other than a Total Taking or a Substantial Taking (a "Partial Taking"), (a) this Lease shall remain in full force and effect as to the portion of the Lease Premises remaining immediately after such Taking, without any abatement or reduction of Annual Participation Rent or any other sum payable hereunder, except as provided in Section 12.5, and (b) Lessee, to the extent the awards or payments, if any, on account of such Taking shall be sufficient for the purpose, but first subject to Section 12.5(A), shall within a reasonable period of time commence and complete, or cause to be commenced and completed, subject to Unavoidable Delays, Restoration of the Lease Premises as nearly as possible to its value, condition, and character immediately prior to such Taking, with such alterations and additions as may be made at Lessee's election pursuant to and subject to the terms of Section 7.5, except for any reduction in area caused thereby; provided, however, that in case of a Taking for temporary use Lessee shall not be required to effect Restoration until such Taking is terminated.

#### 12.5 Application of Awards and Other Payments.

Awards and other payments on account of a Taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards and Payments") shall be applied as follows:

(A) Evidence of Cost of Restoration. In case of a Taking other than a Total Taking, Substantial Taking or a Taking for temporary use, Lessee shall furnish to Agency and any Mortgagee evidence satisfactory to Agency and the Mortgagee of the total cost of the Restoration required by Section 12.4.

(B) Partial Taking. Net Awards and Payments received on account of a Taking other than a Total Taking or a Taking for temporary use shall be held and applied to pay the cost of Restoration of the Lease Premises in accordance with Section 7.6.3 hereof. The balance, if any, of such Net Awards and Payments shall be divided between Agency and Lessee as their interests shall appear, subject to the Mortgagee rights described in Section 12.5(D) First.

(C) Temporary Taking. Net Awards and Payments received on account of a Taking for temporary use shall be paid to Lessee; provided, however, that if any portion

exceeding Five Hundred Thousand Dollars (\$500,000) of any such award or payment is paid by the condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of subsection 12.5(B), subject to Mortgagee rights described in Section 12.5(D) First.

(D) Total or Substantial Taking. Net Awards and Payments received on account of a Total Taking or a Substantial Taking of the Lease Premises shall be allocated as follows:

First: There shall be paid to each Mortgagee an amount equal to the sum of any unpaid principal amount of the indebtedness secured by the Leasehold Mortgage, if any, and any interest accrued thereon, all as of the date on which such payment is made; provided, however, that each such Mortgagee shall only: (i) be paid to the extent of its security in the Lease Premises; and (ii) be paid, on a priority basis, up to but not exceeding an amount equal to the sum of (x) the unamortized portion of the Project Costs for the Lease Premises, plus interest accrued thereon; (y) the cost of any capital improvements to the Lease Premises or Rehabilitation; and (z) all cure costs paid by the Mortgagee (i.e., taxes, assessments, etc.). Notwithstanding the above, in the event of a Substantial Taking, Lessee shall first apply the Net Awards and Payments received as a result of such Substantial Taking to Restoration of the Improvements on the uncondemned portion of the Lease Premises, or to the cost of razing and clearing the Improvements remaining of the uncondemned portion of the Lease Premises in accordance with Section 16.6.1 of the REA.

Second: To Lessee and Agency as their respective interests may appear in the Lease Premises and the Improvements; provided that any payments to Mortgagees pursuant to the preceding paragraph shall be charged against Lessee's interest.

In the event that Lessee's interest under this Lease is subject to any Mortgage, all amounts payable to Lessee (other than amounts payable for Restoration) pursuant to subsections (B) and (D) of this Section 12.5 to the extent permitted by applicable law and required by the Mortgage shall be paid to the Mortgagee to be applied by the Mortgagee in accordance with the terms of the Mortgage.

## ARTICLE 13.0 DEFAULTS, REMEDIES AND TERMINATION

### 13.1 Legal Actions.

#### 13.1.1 Institution of Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the County of Santa Barbara, State of California, or in the Federal District Court in the Central District of California.

#### 13.1.2 Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Lease.

#### 13.1.3 Acceptance of Service of Process.

In the event that any legal action is commenced by Lessee against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Chairman of Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Agency against Lessee, service of process on Lessee shall be made by personal service upon a partner or officer of one of the general partners of Lessee and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

### 13.2 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Lease, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

### 13.3 Default.

Lessee shall not permit any one or more of the following events to occur during the Lease Term. If any of the following events shall occur and shall continue for the applicable period described in Section 13.3.1 after notice from Agency as required by Article 3.0 and Section 13.3.1, the same shall constitute an "Event of Default" upon the lapse of such applicable period, subject, nevertheless, to any provi-

sion of this Lease excusing or allowing for delay of performance by Lessee:

(A) Fail to commence or complete the construction of the Improvements as required by this Lease for a period of three (3) months (or such longer period as may be the result of Unavoidable Delay); subject, however, to the rights of Lessee to delay or suspend construction pursuant to Section 4.2.2 above;

(B) Abandon or substantially suspend construction of the Improvements as required by this Lease for a period of three (3) months (or such longer period as may be the result of Unavoidable Delay); subject, however, to the rights of Lessee to delay or suspend construction pursuant to Section 4.2.2 above;

(C) Use the Lease Premises for any purpose other than those provided for in this Lease;

(D) Fail or refuse to pay to Agency when due the applicable rents and other sums required by this Lease to be paid by Lessee subject to the provisions of Article 3 and Section 13.3.1(B);

(E) Fail or refuse to pay when due any taxes, assessments or other Impositions as required by this Lease, including any assessment levied against the Lease Premises pursuant to the Parking Covenants, subject, however, to the rights of Lessee to contest such Impositions as permitted by this Lease;

(F) Make or suffer to be made any voluntary or involuntary conveyance, assignment, sublease or other transfer of the leasehold interest in the Lease Premises, or any part thereof, or of the rights of Lessee under this Lease in violation of the terms of this Lease, or any significant change in the membership, management or control of Lessee that is not permitted pursuant to Section 8.2.1(D);

(G) Commit or suffer to be committed any waste of the Lease Premises or the Improvements, or any part thereof in violation of this Lease;

(H) Alter the Improvements in any manner in violation of this Lease;

(I) Fail to maintain insurance as required by this Lease;

(J) Fail to make full repair and restoration of the Lease Premises and the Improvements in the event of damage or destruction if required by the terms of this Lease;

(K) Engage in any financing, or any other transaction creating any Leasehold Mortgage on the Lease Premises or the Improvements, or placing or suffering to be placed thereon any lien or other encumbrance, or suffering any levy or attachment to be made thereon except as permitted by the terms of this Lease;

(L) Voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or be adjudicated a bankrupt, or make a general assignment for the benefit of creditors;

(M) Failure by Lessee to commence marketing the Mall Stores within one (1) year following Lessee's receipt of Agency's notice to commence marketing pursuant to Section 5.5 above;

(N) Abandon possession of the Lease Premises or the Improvements, or Lessee's interest therein except as permitted by this Lease;

(O) Fail to provide Agency with Annual Statements in accordance with Section 3.2.4(B);

(P) Fail to perform or comply with any other material term or provision hereof.

The occurrence of any of the events described above shall constitute a default by Lessee under this Lease ("Default").

#### 13.3.1 Events of Default/Monetary and Non-Monetary.

(A) Non-Monetary Defaults. In the event of any Default (other than a Default described in Section 13.3(D)), Agency shall provide Lessee with written notice specifying in detail (i) that a Default has occurred, (ii) the nature of such Default, (iii) the actions required to be taken by Lessee to remedy or cure the Default, (iv) the date on which the Default will become an Event of Default if not sooner cured or remedied, and (v) that failure to cure or remedy the Default prior to such date may result in a forfeiture of the Lease and entitle Agency to exercise its other rights and remedies hereunder. In the event Lessee has not remedied or cured such Default within sixty (60) days after Lessee's receipt of such written notice (or, if it is not practicable to remedy or cure such Default within such period, in the event Lessee has not commenced to remedy or cure such Default within such period), the same shall constitute an Event of Default. In no event

shall an Event of Default exist with respect to any Default for which it is not practicable to remedy or cure within the period set forth in the immediately preceding sentence, provided Lessee has commenced the remedy or cure of such Default prior to the lapse of such period and diligently prosecutes such remedy or cure to completion.

(B) Monetary Defaults. For purposes of a Default under Section 13.3(D), Annual Participation Rent shall be due and owing as follows:

(1) Estimated quarterly payments of Annual Participation Rent shall be due and payable to Agency in accordance with Section 3.2.4(A).

(2) Adjustments to Annual Participation Rent payable to Agency in any Lease Year which are reflected in Lessee's Annual Statement shall be due and payable one hundred fifty (150) days after the end of the applicable Lease Year in accordance with Section 3.2.4(C).

(3) Amounts payable to Agency in any Lease Year pursuant to Section 3.2.4(B)(3) due to the failure by Lessee to deliver an Annual Statement within the time required by Section 3.2.4(B) shall be due and payable one hundred fifty (150) days after the end of the applicable Lease Year in accordance with Section 3.2.4(B)(3).

If Lessee fails to make any of the payments of Annual Participation Rent within the times set forth above, Agency shall provide Lessee with written notice of such failure to pay which notice shall specify in detail (i) the amount required to be paid by Lessee, (ii) the date on which such amount must be paid in order to avoid an Event of Default, and (iii) that failure to pay such amount by the date specified in such notice may result in a forfeiture of the Lease and entitle Agency to exercise its other rights and remedies hereunder. In the event such failure to pay continues for thirty (30) days after the date of Lessee's receipt of such notice from Agency, the same shall constitute an Event of Default. Notwithstanding the foregoing, with respect to amounts payable to Agency under Section 3.2.4(E)(5) as a result of an underpayment of Annual Participation Rent disclosed by an unchallenged audit (including an audit, or portion thereof, which is disputed but then such dispute is resolved) or by a final judicial determination pursuant to Section 3.2.4.(E)(5), in the event Lessee fails to pay such underpayment within thirty (30) days of the Underpayment Determination Date, the same shall constitute an Event of Default.



### 13.4 Agency Rights of Termination and Reentry.

#### 13.4.1 Rights of Termination.

Upon the occurrence of any material Event of Default, Agency may, at its option and in addition to any other remedy provided for in this Lease, but subject to the rights of Mortgagees, terminate the Lease and revert in Agency the leasehold interest theretofore transferred to Lessee, by written notice to Lessee of its intention to do so. Such notice by Agency shall expressly state that an Event of Default has occurred.

Notwithstanding the foregoing, in the event that Lessee disputes Agency's determination that a Default has occurred and delivers notice of such dispute to Agency within thirty (30) days after the occurrence of an Event of Default pertaining to such Default, and if such dispute is made in good faith, then no such termination of this Lease by Agency shall be permitted during the pendency of any action or proceeding to determine such dispute; provided, however, that if such action or proceeding results in a final determination unfavorable to Lessee, Lessee must cure such Default within thirty (30) days following such determination (or, if it is not practicable to cure or remedy such Default within such thirty (30) day period then Lessee must commence the curing or remedying of such Default within said thirty (30) day period and diligently prosecute such cure or remedy to completion). Failure of Lessee to cure such Default within the aforesaid period shall entitle Agency to terminate this Lease and any such determination in such action or proceeding may provide for the termination of this Lease conditioned upon permitting Lessee to cure such Default as herein provided. Notwithstanding the foregoing, Lessee shall not be entitled to dispute any Event of Default arising from the failure of Lessee to pay an underpayment of Annual Participation Rent, determined in accordance with Section 3.2.4(E)(5), within the period specified in Section 13.3.1(B).

Upon termination of this Lease pursuant to this Section 13.4 it shall be lawful for Agency to reenter and repossess the Lease Premises and the Improvements thereon (subject to the rights of Mall Tenants with Non-Disturbance Agreements with Agency), without process of law, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Lease Premises and the Improvements thereon, peaceably to Agency immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all Improvements on the Lease Premises specified in this Lease to vest in Agency, shall vest in Agency.

No ejectment, reentry or other act by or on behalf of Agency shall constitute a termination unless Agency gives Lessee notice of termination in writing. Such termination shall not relieve or release Lessee from any obligation incurred pursuant to this Lease with respect to the period prior to the date of such termination.

Except as expressly provided elsewhere in this Lease and subject to Section 13.10, the following provisions shall apply. Termination of the Lease under this Section 13.4 shall not relieve Lessee from the obligation to pay any sum due to Agency or from any claim for damages against Lessee. Agency may, at its option, enforce all of its rights and remedies under this Lease, including the right to recover any rent and all other sums payable hereunder as the same become due hereunder. Additionally, Agency shall be entitled to recover from Lessee all costs of maintenance and preservation of the Lease Premises, and all costs, including attorneys' and receiver's fees, incurred in connection with the appointment of and performance by a receiver to protect the Lease Premises and Agency's interest under this Lease. The right of termination provided by this Section 13.4 is not exclusive and shall be cumulative to all other rights and remedies possessed by Agency, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which Agency may be entitled.

#### 13.4.2 Right of Reentry; Reimbursements.

Agency shall have the right, at its option, but subject to the provisions of Section 13.4.1, to reenter and take possession of the Lease Premises (hereinafter in this Section 13.4.2 sometimes the "Property") conveyed to Lessee with all Improvements thereon, and terminate and revest in the Agency the leasehold estate theretofore conveyed to Lessee, if after conveyance of the leasehold estate a material Event of Default as described in Section 13.3 occurs in violation of Lessee's covenants under this Lease and the same is not cured or remedied as provided in Section 13.4.1.

Such right to reenter and repossess shall not defeat, render invalid, or limit any Leasehold Mortgage, deed of trust, or other security instrument or sale and leaseback or other conveyance for financing permitted by this Lease, and shall be subject to:

(A) Any rights or interests provided in this Lease for the protection of the holder of such Leasehold Mortgage, deed of trust or other security instrument, Agency under such a sale and leaseback, or the grantee under such other conveyance for financing;

(B) The rights or interests under the REA or Parking Covenants of any party thereto (other than a defaulting party);

(C) Any Approved Lease with respect to which Agency has delivered a Non-Disturbance Agreement.

All Approved Leases entered into by Lessee shall contain appropriate reference and provision to give effect to the Agency's right of reentry provided in this Section, subject to the foregoing provisions.

13.4.3 Revesting of Lease Premises in Agency. Upon the revesting in Agency of the leasehold estate in the Lease Premises as provided in this Section (or in Section 13.4.1) prior to the issuance of a Certificate of Completion in accordance with Section 4.9 hereof for the improvements to be constructed on the Lease Premises, then Agency shall, pursuant to its responsibility under state law, use its best efforts to re-lease or sell such Property (including the rights under the REA and Parking Covenants) as soon as possible and in such manner as Agency shall find feasible for the highest price possible and consistent with the objectives of the law and of the Redevelopment Plan, and subject to the REA, to a qualified and responsible party or parties (as determined by the Agency) as shall be satisfactory to the Agency, who will assume the obligation of making or completing the Improvements, or such other improvements in their stead, or operate and maintain the Improvements on the Lease Premises, or otherwise use the Lease Premises in accordance with Section 30.1 of the REA, and in accordance with the uses specified for such Property in the Redevelopment Plan. Lessee shall have the right to secure prospective purchasers meeting the qualifications set forth in this Section and Agency agrees that it will not unreasonably withhold its consent to the sale or lease of such Property to any prospective purchaser/lessee secured by Lessee who has a net worth at least in the amount set forth in Section 8.2.1(F)(3) with respect to an assignee of Lessee, and is significantly engaged (either itself or through one or more affiliated entities) in real estate development (or management, if the development of the Improvements has been completed) of the type contemplated for the Property under the Redevelopment Plan. Upon such re-leasing or sale of such Property, the proceeds thereof shall be applied:

(A) First, to reimburse Agency on its own behalf or on behalf of the City, for all costs and expenses of Agency incident to such re-lease or sale and/or conveyance, for all costs and expenses incurred by Agency (including, but not limited to, salaries to personnel, in connection with the recapture, management and re-lease or sale of such Property, but less any income derived by Agency therefrom in connection

with such management); all taxes, assessments, and water and sewer charges with respect thereto (or, in the event that such Property is exempt from taxation or assessment or such charges during the period of ownership by the Agency, then such taxes, assessments or charges as would have been payable if such Property was not so exempt): any payments made, or necessary to be made, to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Lessee, its successors or transferees, any expenditures made or obligations incurred by Agency with respect to the making or completion of the Improvements or any part thereof on such Property; and any amounts otherwise owing the Agency by Lessee or by its successor or transferee to the date of termination of this Lease; and

(B) Second, to reimburse the Lessee, its successor or transferee, up to the amount equal to the sum of (1) the unamortized portion of the \$7,780,000 Developer's Consideration paid by Lessee (or Developer as defined in the DDA) under the DDA and amortized in equal payments over the Lease Term, and (2) the costs incurred for the development of the Property, and for the Improvements existing thereon at the time of reentry and repossession including the Project Costs as described in Exhibit "8"; less any gains or income withdrawn or made by the Lessee therefrom or from the Improvements thereon after all operating expenses, debt service and Annual Participation Rent has been paid.

(C) Third, to repay the Developer Loans delivered pursuant to the DDA in connection with the Developer Loans thereunder.

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

The rights established in this Section are to be interpreted in light of the fact that Agency will convey the Lease Premises to Lessee for development and not for speculation in undeveloped land.

### 13.5 Agency Recovery Upon Termination.

If Lessee's right to possession is terminated by Agency because of a breach of this Lease, this Lease shall terminate. Upon any such termination of this Lease, and in addition to all other rights and remedies it may have, Agency may recover from Lessee subject to credit under Section 13.4:

(A) The worth at the time of award of the unpaid rent and all other sums payable hereunder which are due, owing and unpaid by Lessee to Agency at the time of termination.

(B) The worth at the time of award of the unpaid rent and all other sums payable hereunder which would have come due after termination until the time of award, reduced by the amount, if any, of such loss which Lessee proves could have been reasonably avoided.

(C) All other amounts necessary to compensate Agency for all the detriment proximately caused by Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things are likely to result therefrom, which shall specifically include all costs, including attorneys' fees, of repossession, removing persons or property from the Lease Premises, repairs, reletting, including leasing commissions, and reasonable alterations of the Improvements on the Lease Premises in connection with reletting, if any.

The foregoing rights shall be subject to Section 13.10.

### 13.6 Additional Remedies of Agency.

Upon the occurrence of an Event of Default, Agency, at its option, may thereafter (but not before) but subject to the provisions of Section 13.10:

(A) Correct or cause to be corrected the Default relating to such Event of Default (other than construction of the Improvements or payment of the indebtedness under any Leasehold Mortgage which Agency may not cure on behalf of Lessee) and charge the costs therefor to the account of Lessee as additional rent;

(B) Correct or cause to be corrected said Default and pay the costs thereof from the proceeds of any insurance; or in the event that Lessee has obtained a faithful performance bond indemnifying Agency, Agency may call upon the bonding agent to correct said Default and pay the cost thereof;

(C) Continue this Lease and Lessee's right to possession in effect and enforce its rights and remedies under this Lease, including the right to recover rent as it becomes due as provided in Section 1951.4 of the California Civil Code;

(D) Have a receiver appointed to take possession of Lessee's interest in the Lease Premises and the Improvements, with power in said receiver to administer Lessee's interest therein, to collect all funds available to Lessee in connection with its operation and maintenance thereof; and to perform all other acts consistent with Lessee's obligations under this Lease as the court deems proper;

(E) Maintain and operate the Lease Premises and the Improvements without terminating this Lease and faithfully account to Lessee in connection therewith; or

(F) Terminate this Lease pursuant to Section 13.4 hereof, by written notice to Lessee of its intention to do so.

Agency reserves and shall have the right at all reasonable times to enter the Lease Premises and the Improvements for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Lease Premises and the Improvements or to inspect the operations conducted thereon. Any such entry shall be made only after reasonable notice to Lessee. In the event that such entry or inspection by Agency discloses that the Lease Premises or the Improvements are not in a decent, safe, and sanitary condition, are damaged, or in disrepair, Agency shall have the right, subject to the rights, remedies, limitations and procedures set forth in the REA and subject to the provisions in this Lease regarding damage and destruction after a casualty or condemnation, after thirty (30) days written notice to Lessee, to have any necessary maintenance or repair work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Agency in having such necessary maintenance or repair work done in order to keep the Lease Premises and the Improvements in a decent, safe and sanitary condition. Further, if at any time Agency determines that the Lease Premises and/or the Improvements are not in a decent, safe and sanitary condition, Agency may, at its sole option, without additional notice, require Lessee to file with Agency a faithful performance bond to assure prompt correction of any condition which is not decent, safe and sanitary. Said bond shall be in an amount adequate in the opinion of Agency to correct the said unsatisfactory condition. Lessee shall pay the cost of said bond.

The rights reserved in this Section 13.6 shall not create any obligations on Agency or increase obligations imposed on Agency elsewhere in this Lease, and shall not defeat, render invalid or limit the rights or interests expressly provided in this Lease for the protection of Mortgagees.

### 13.7 Status of Subleases at Termination of Lease.

Except to the extent Agency has executed a Non-Disturbance Agreement or is required to execute and deliver a Non-Disturbance Agreement hereunder, the termination of this Lease prior to its expiration, by cancellation or otherwise, shall, at the option of the Agency, not serve to cancel subleases or subtenancies which shall be then still in effect under an Approved Lease, but shall, at the option of the Agency, operate as an assignment to Agency at that time of any and all such subleases or subtenancies and all of Lessee's

rights therein and thereunder. Lessee shall not make any subleases for terms longer than the original term of this Lease. Agency hereby agrees for the benefit of each such sublessee under an Approved Lease who has obtained a Non-Disturbance Agreement from Agency, or for whom Agency is required to execute and deliver a Non-Disturbance Agreement, that upon termination of this Lease Agency will recognize such sublessee under an Approved Lease as the direct lessee of Agency provided no default exists under such sublease which at such time would then permit Agency thereunder to terminate the same. In addition, such sublessee shall have the rights under the REA and Parking Covenants as they had prior to the termination of this Lease.

Each Approved Lease shall contain an irrevocable covenant and undertaking on the part of the sublessee expressly made for the benefit of Agency herein, to attorn to Agency herein, at the option of and upon the demand of Agency herein, in the event this Lease shall be terminated for any default, on the part of Lessee, with an additional provision that such attornment shall operate to create the relation of landlord and tenant directly between Agency herein as Agency on the one hand, and sublessee as lessee on the other hand, with respect to the premises covered by the Approved Lease, all with the same force and effect as would have been the case had said such sublease been made by and between said sublessee and Agency herein in the first instance; provided, however, and except that Agency herein shall not be in any way, or to any extent, answerable to sublessee for any past act, neglect or Default on the part of Lessee herein, and sublessee shall have no right to set up or assert the same, for any damages arising therefrom as an offset against Agency herein. The foregoing provision shall be effective as to all parties concerned, including sublessees, whether included in an applicable sublease or not.

### 13.8 Effect of Termination of Major Lease.

#### 13.8.1 Termination Prior to Certificate of Completion.

(A) Right to Acquire Substitute Major Retailer. Upon the termination of a Major Lease prior to the issuance of a certificate of completion on such Major Tract in accordance with the REA, and upon Agency's recovery of sole and exclusive possession of the affected Major Tract, free and clear of the rights of the defaulted Major and any leasehold mortgagee having an interest therein, then Lessee shall have the right for a two (2) year period from and after the date Agency reacquires possession of the Major Tract to diligently attempt to procure a firm and binding agreement with a Substitute Major Retailer to acquire the defaulted Major Tract and construct or complete construction of the Improvements

thereon. Any such agreement shall be satisfactory to Agency and Lessee shall submit such agreement to Agency for approval. Agency shall indicate its acceptance of the Substitute Major Retailer and satisfaction with Lessee's agreement with the Substitute Major Retailer by written notice to Lessee. The satisfaction and acceptance by Agency of the Substitute Major Retailer shall only be evidenced in writing so stating. Agency covenants and agrees with Lessee not to convey the fee estate or a leasehold interest in such Major Tract to any other person prior to the expiration of said two-year period.

(B) Definition of Substitute Major Retailer. As used herein, "Substitute Major Retailer" shall mean during the first five (5) Lease Years, a retailer individually occupying 135,000 square feet or more in any single shopping center; then, after the first five (5) Lease Years, Substitute Major Retailer shall mean a retailer individually occupying 120,000 square feet or more in any single shopping center. The Substitute Major Retailer shall be either (i) a so-called "full-line department store" carrying houseware, domestic goods, men's, women's and children's apparel, shoes and accessories, and other merchandise typically sold in department stores of such size in the Southern California area, but excluding furniture, large appliances and other merchandise which, because of size or other considerations, is not typically sold in stores of such size, or (ii) a so-called "specialty retailer," carrying a wide selection of high quality men's, women's and children's apparel, shoes and accessories.

(C) Evidence of Negotiations. During said two (2) year period, Lessee shall submit to Agency quarterly reports evidencing that Lessee is diligently pursuing negotiations with a Substitute Major Retailer. Evidence of progress toward procuring a Substitute Major Retailer shall be deemed satisfactory to the Agency, if Lessee shall in writing identify the prospective Substitute Major Retailers with whom Lessee has had contact, the time such contacts were made, and a summary of the efforts and status of the efforts to obtain a Substitute Major Retailer, all in reasonably sufficient detail to evidence bona fide attempts by Lessee to procure a Substitute Major Retailer within the two (2) year period. Lessee shall have a right to extend the two (2) year period for an additional two (2) year period if, prior to the expiration of the initial two (2) year period, Lessee notifies Agency in writing that it is diligently pursuing negotiations in good faith with a Substitute Major Retailer, but that additional time is required to complete such negotiations and produce an agreement satisfactory to Agency. Lessee's notice of extension shall be accompanied by evidence of Lessee's progress toward procuring a Substitute Major Retailer as required by this Section 13.8.1(C).



(D) Alternative Development. If at any time it becomes apparent to Lessee that it will not, despite diligent attempts, be able to procure a firm and binding agreement with a Substitute Major Retailer within said initial two (2) year period, or the additional two (2) year period, Lessee may request Agency's approval to pursue a mutually agreeable substitute development use for the affected Major Tract. Upon delivery to Agency of evidence of Lessee's inability, despite diligent efforts, to obtain a Substitute Major Retailer, Agency agrees to consider in good faith and not to unreasonably withhold its approval of the substitute development use proposed by Lessee, provided such use conforms to the use restrictions contained in the REA, is not prohibited under Section 11.6 of the REA and otherwise complies with the requirements set forth in Section 30.1 of the REA. If Agency and Developer agree to such substitute development use, Agency and Lessee shall enter into an amendment to this Lease to include the defaulted Major Tract into the Lease Premises, which amendment shall contain such terms and conditions as Lessee and Agency may agree.

13.8.2 Termination After Certification of Completion. If at any time after a certificate of completion has been issued for the Improvements on a Major Tract in accordance with the REA a Major Tract reverts in Agency due to termination of a Major's Lease and all right, title and interest of the Major leasehold mortgagees in the Major Tract, including any right to cure the default of the Major under the Major Lease, or the right to obtain a new lease of the Major Tract from Agency have expired, Lessee shall have the right to acquire the Major Tract together with all Improvements located thereon. Agency shall give Lessee written notice of the termination of the Major Lease and the termination of all rights of the Major's leasehold mortgagee in the Major Tract. Lessee may thereafter exercise its right to acquire the Major Tract by giving Agency written notice of such exercise at any time within the two (2) year period after the date of Agency's notice of its termination of the Major Lease. If Lessee exercises its right to acquire the Major Tract, Lessee and Agency shall enter into an amendment to this Lease to include the Major Tract in the Lease Premises which amendment shall contain such terms and conditions as are hereafter specified or otherwise agreed to by and between Agency and Lessee. Lessee shall pay Annual Participation Rent for the Major Tract in accordance with the following:

(A) No Capital Expenditure Required. If Lessee is not required to restore the Improvements on the Major Tract or does not elect to make capital expenditures in excess of One Hundred Thousand Dollars (\$100,000) ("Capital Expenditure Threshold") in order to make operation of the Improvements economically feasible, Lessee shall pay Annual Participation

Rent equal to twenty percent (20%) of the Annual Gross Receipts received by Lessee with respect to the Major Tract.

(B) Capital Expenditure Required. If Lessee is required to restore the Improvements, or makes capital expenditures in excess of the Capital Expenditure Threshold in order to make operation of the Improvements economically feasible, Lessee shall pay Annual Participation Rent equal to twenty percent (20%) of the Annual Gross Receipts received from the Major Tract over a Base Amount established for the Major Tract. The Base Amount shall be established on the basis of the Adjusted Gross Receipts received by Lessee for the Major Tract projected to one hundred percent (100%) occupancy during the earlier of (i) the first full calendar year when the Improvements in the Major Tract are operating at an average annual rate of occupancy of gross leasable area of retail space of sixty percent (60%) or greater, or (ii) the first full calendar year in which the Improvements on the Major Tract are operating at an actual rate of occupancy of gross leasable area of retail space of eighty percent (80%) or greater.

(3) Sublease of Third Party. If Lessee subleases the Improvements on the Major Tract to a person who operates the Improvements under a single management after Lessee has restored such Improvements or who makes capital expenditures in excess of the Capital Expenditure Threshold in order to make operation of the Improvements economically feasible, Lessee shall pay Annual Participation Rent equal to twenty percent (20%) of the Annual Gross Receipts received by Lessee with respect to the Major Tract, except any reimbursement received by Lessee for the cost of such restoration or capital expenditure shall not be included in the calculation of Annual Gross Receipts.

The Capital Expenditure Threshold shall be increased annually by an amount equal to the percentage change in construction industry costs, from the Effective Date of this Lease until the date of the capital expenditure contemplated herein, as published by the Engineering News Record or similar construction industry index as Lessee and Agency shall agree in the event such information is not available in the Engineering News Record, or such publication is no longer published. Except as otherwise specified above, the definitions and calculations of Annual Participation Rent, Adjusted Gross Receipts, and Annual Gross Receipts shall be the same as contained in this Lease.

The Major Tract shall continue to be subject to the REA, except that Lessee or any sublessee of Lessee shall only be required to operate the Improvements thereon, if at all, in accordance with Section 30.2 of the REA. Notwithstanding the above, if the Lessee subleases or transfers the Major Tract to

a third party and such third party at any time thereafter ceases operation, Lessee shall have two (2) years from the date such third party ceases operation to locate another person willing to operate the Improvements in accordance with the REA. Any default under Lessee's lease of the Major Tract with Agency shall not constitute a Default under this Lease.

At the election of Lessee, Agency and Lessee shall execute and cause to be recorded a memorandum of acquisition agreement in the Official Records of Santa Barbara County, California, which memorandum shall state that the rights granted hereunder shall be subordinate to any mortgage placed on the leasehold estate created by Major's lease for a Major Tract.

13.8.3 Release of Interest. If Lessee does not exercise its right to acquire the Major Tract under this Section 13.8 prior to the expiration of the time periods set forth herein for such acquisition, Lessee shall, upon the written request of Agency, execute and deliver to Agency a certificate stating that the time period granted to Lessee to acquire the Major Tract has expired and Lessee has no further rights to acquire such Major Tract under this Section 13.8.

#### 13.9 Default by Agency.

The default or breach by Agency of any obligation required to be performed by it under this Lease, the DDA, or any other agreement related hereto or made in furtherance hereof shall constitute a default by Agency under this Lease ("Agency Default"). In addition, the default or breach by the City of any obligations required to be performed by it under the Cooperation Agreement shall constitute an Agency Default if Agency fails to comply with the Cooperation Agreement or does not exercise due diligence and best efforts to enforce the obligations of the City thereunder. If Agency is in default with respect to payments due under the Promissory Note (as defined in the DDA), or the Agency Note (as defined in the Parking Agreement), Lessee shall have the right, so long as Lessee is the holder of said Notes, to offset any delinquent amounts due to Lessee from Agency thereunder against payments of Annual Participation Rent next becoming due under the terms of this Lease; provided, however, that each time Lessee exercises its offset right, Lessee shall endorse the applicable Note to indicate the amount applied to the unpaid principal balance and accrued interest thereon as a result of the offset. In addition, Lessee shall have the right, in the event of any Agency Default, to offset the amount of any damages incurred by Lessee as a result thereof against payments of Annual Participation Rent next becoming due under the terms of this Lease.

### 13.10 Exculpation Clause.

After the date on which Lessee is entitled to be issued a Certificate of Completion for the Lease Premises pursuant to Section 4.9 of this Lease, Lessee shall be released from all personal liability except as follows and any judgment obtained against Lessee thereafter shall be limited to the aggregate of the following: (i) rent (including, but not limited to, Annual Participation Rent) and all other fixed and ascertainable monetary obligations of Lessee under this Lease due, owing or unpaid to Agency as of the date of any notice of Default by Agency, and (ii) any Annual Participation Rent payable to Agency from the date of any such notice of Default to the date of the termination of this Lease. All other obligations and liabilities of Lessee under the Lease shall be deemed to be nonrecourse as against Lessee and Agency's sole recourse against Lessee for any liabilities in excess of the foregoing should be against Lessee's interest in the Lease Premises. Except as otherwise provided above, nothing contained in this section shall limit the obligations of Lessee under this Lease pertaining to the cure by Lessee of any Default to avoid a termination of this Lease or the rights and remedies of Agency to cure any such Default or to take such other actions as may be available to Agency under the provisions of this Lease. Notwithstanding any provision in this Lease to the contrary, the limitation on Lessee's liability under this section shall apply to any judgment or order (monetary, equitable or otherwise) obtained against Lessee.

## ARTICLE 14.0 GENERAL PROVISIONS

### 14.1 Notices, Demands and Communications between the Parties

Formal notices, demands and communications between Agency and Lessee shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Lessee addressed to each party as follows:

Agency:	REDEVELOPMENT AGENCY OF THE
	CITY OF SANTA BARBARA
	City Hall
	P.O. Drawer P-P
	735 Anacapa Street
	Santa Barbara, CA 93102
	Attn: Executive Director

With a copy to: CITY OF SANTA BARBARA  
City Hall  
P.O. Drawer P-P  
735 Anacapa Street  
Santa Barbara, CA 93102  
Attn: City Attorney

Lessee: SANTA BARBARA ASSOCIATES  
c/o Reininga Corporation  
600 Montgomery Street, Suite 3600  
San Francisco, CA 94111

With a copy to: PASEO NUEVO ASSOCIATES  
c/o Reininga Corporation  
600 Montgomery Street, Suite 3600  
San Francisco, CA 94111

With a copy to: JMB/PASEO NUEVO ASSOCIATES  
875 North Michigan Avenue  
Suite 3900  
Chicago, Illinois 60611  
Attn: Mr. Robert Chapman

With a copy to: JMB/California  
One Embarcadero Center, Ste 2716  
San Francisco, CA 94111-3706  
Attn: Ms. Darla Totusek

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

#### 14.2 Time of Essence.

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

#### 14.3 Conflict of Interests.

No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

#### 14.4 Warranty Against Payment of Consideration.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

#### 14.5 Nonliability of Agency Officials and Employees.

No member, official or employee of Agency shall be personally liable to Lessee, or any successor in interest, in the event of any Agency Default or for any amount which may become due to Lessee or its successor or on any obligations under the terms of this Lease.

#### 14.6 Inspection of Books and Records.

Agency has the right at all reasonable times to inspect the books and records of Lessee pertaining to the Lease Premises as pertinent to the purposes of this Lease. Lessee shall keep and maintain such books and records in the City of Santa Barbara. Lessee also has the right at all reasonable times to inspect the books and records of the Agency pertaining to the Lease Premises as pertinent to the purposes of this Lease.

#### 14.7 No Partnership.

Neither anything in this Lease contained, nor any acts of Agency or Lessee shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Agency and Lessee.

#### 14.8 Compliance with Law.

Except to the extent Agency has assumed any obligations imposed by the Project Approvals and as set forth in the Scope of Development, Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, State and federal authorities, pertaining to the Lease Premises and the Improvements, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Lease Premises and the Improvements, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, sale, lease or occupancy of the property. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Lessee, sublessee or permittee has violated any such

ordinance or statute in the use of the premises shall be conclusive of that fact as between Agency and Lessee.

#### 14.9 Estoppel Certificates.

Each party shall at any time, and from time to time, upon not less than twenty (20) days prior notice by the other, execute, acknowledge and deliver to the other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease and, if in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered by Lessee may be relied upon by Agency or any prospective purchaser of the fee or any prospective mortgagee or encumbrancee thereof or any prospective assignee or any mortgage or trust deed upon the fee, and it being further intended that any such statement delivered by Agency may be relied upon by any prospective assignee of Lessee's interest in this Lease, any prospective sublessee of all or part of the Lease Premises, any prospective Mortgagee or encumbrancee of this Lease or of any sublease or of the leasehold estate created by this Lease or of any sublease, or any prospective assignee of any such Leasehold Mortgage or encumbrance. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

#### 14.10 Recording of Lease.

If in order to reduce recording costs, Lessee wishes to record an abstract of this Lease, or of that portion or portions proposed to be covered by approved financing, Agency shall, upon request from Lessee so to do, execute such an abstract, or abstracts, for purposes of recordation. All costs in connection therewith shall be borne by Lessee.

#### 14.11 Severability.

If any provision of this Lease shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### 14.12 Binding Effect.

This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

#### 14.13 Captions.

The captions contained in this Lease are merely a reference and are not to be used to construe or limit the text.

#### 14.14 Approvals by Agency and Lessee.

Wherever this Lease requires the Agency's or Lessee's approval of any matter, such approval shall not be unreasonably delayed or withheld.

14.15 Liability. No advisor, trustee, director, officer, employee, beneficiary, shareholder, participant or agent of or in JMB/Paseo Nuevo Associates, a general partner of Developer ("JMB"), shall have any personal liability, directly or indirectly, under or in connection with this Lease or any lease made or entered into under or pursuant to the provisions of this Lease, or referred to herein, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and all other persons and entities shall look solely to JMB's assets for the payment of any claim or for any performance; provided, however, that this provision shall not prevent a Party from naming JMB or any partner in JMB as a party defendant or from obtaining a judgment against JMB or any partner in JMB for the purpose of enforcing this Lease or any lease referred to herein or any amendment thereto if recourse is limited to the assets of JMB.

### ARTICLE 15.0 GLOSSARY OF TERMS

As used in this Lease the following terms have the following respective meanings:

"Adjusted Gross Receipts" - As defined in Section 3.2.2(A).

"Adjustment Date" - As defined in Section 8.2.1(F)(3).

"Affiliate" - As defined in Section 3.2.5(A).

"Agency" - As defined in Section 1.8.1.

"Agency Default" - As defined in Section 13.9.



"Agency Representative" - As defined on Section 1.8.1.

"Alternative Terms" - As defined in Section 2.6.1(B)(1).

"Annual Gross Receipts" - As defined in Section 3.2.1.

"Annual Participation Rent" - As defined in Section 3.2.

"Annual Participation Rent Minimum" - As defined in Section 3.2.5(B).

"Annual Statement" - As defined in Section 3.2.4(B)(2).

"Approved Lease" - As defined in Section 5.4.

"Approved Plans and Drawings" - As defined in Section 4.1.

"Appurtenant Interests" - As defined in Section 1.7.1.

"Appurtenant Parking" - As defined in Section 1.7.1.

"Arts Complex" - As defined in Section 5.2.5.

"Auditor" - As defined in Section 3.2.4(E)(2)(d).

"Auditor Report" - As defined in Section 3.2.4(E)(4).

"Base Amount" - As defined in Section 3.2.5(C).

"Base Year" - As defined in Section 3.2.5(D).

"Broadway Tract" - As defined in Section 1.5.1.

"CAM" - As defined in Section 3.2.1(B)(1).

"Capital Expenses" - Those expenditures which are not deemed Operating Expenses.

"Capital Expenditure Threshold" - As defined in Section 13.8.2.

"Certificate of Completion" - As defined in Section 4.9.

"City" - The City of Santa Barbara, California.

"Commencement of Construction" - The commencement of work on the Improvements in such degree and such scope as shall, if carried on uninterrupted, except for Unavoidable Delays, cause such Improvements to be completed by the dates set forth in the Schedule of Performance.

"Components" - As defined in Section 5.2.5.

"Construction Management Agreement" - As defined in Section 1.8.2.

"Construction Manager" - As defined in Section 1.8.2.

"Construction Period" - As defined in Section 9.1.1(B).

"Consumer Price Index" - As defined in Section 3.2.5(E).

"Cooperation Agreement" - As defined in Section 1.7.4.

"Cost of Goods Sold" - As defined in Section 3.2.5(F).

"Contiguous Owner" - As defined in Section 1.5.4.

"Contiguous Parcel or Continuous Parcels" - As defined in Section 1.5.4.

"Date of Taking" - As defined in Section 12.2.

"Default" - As defined in Section 13.3.

"Developer Loans" - As defined in Section 9.1.1(B).

"Disposition and Development Agreement" or "DDA" - As defined in Section 1.1.

"Effective Date" - As defined in Section 2.2.

"Equipment Lessor" - As defined in Section 7.1.3.

"Equipment Sublessor" - As defined in Section 7.1.3.

"Establishment Year" - As defined in Section 3.2.5(G).

"Establishment Year Annual Statement" - As defined in Section 3.2.4(B)(1).

"Event of Default" - As defined in Section 13.3.

"First Lease Year" - As defined in Section 2.3.

"Full Insurable Value" - As defined in Section 11.3.

"Gross Operating Revenue" - As defined in Section 3.2.1.

"Impositions" - As defined in Section 6.2.

"Improvements" - As defined in Section 4.1.

"Institutional Investor" - Any JMB Entity or any professional investor in the business of investing in substantial commercial real estate projects.

"Institutional Lender" - Any one or combination of the following lending institutions: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation authorized to make loans in the State of California; a company engaged in the ordinary course of business as a lender with net unencumbered assets in the amount of not less than \$25,000,000 which is duly licensed or registered with any regulatory agency having jurisdiction over its operation, if any, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender where the restriction or impairment would be directly related to the proposed loan to Lessee, and which is regularly engaged in business in an office or location in the State of California; or any other entity having a net worth of \$50,000,000 or more whether or not a so-called institution; or any division, subsidiary, parent or affiliate owned or controlled by, owning or in control of or in common control or ownership with any of the foregoing entities.

"Insurance Requirements" - All terms of an insurance policy covering or applicable to the Lease Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Lease Premises or any part thereof or any use or condition of the Lease Premises or any part thereof.

"JMB" - As defined in Section 1.8.2.

"JMB Entity" - As defined in Section 8.2.1(D).

"JMB Realty" - As defined in Section 8.2.1(D).

"JMB Shareholders" - As defined in Section 8.2.1(D).

"JMB Subsidiary" - As defined in Section 8.2.1(D).

"Large National Tenant" - [to be provided by JDS.]

"Lease" - This Lease, as at the time amended, modified or supplemented.

"Lease Premises" - As defined in Section 1.6.

"Lease Term" - As defined in Section 2.2.

"Lease Year" - As defined in Section 2.3.

"Leasehold Mortgages" - As defined in Section 9.1.1.

"Legal Requirements" - All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Lease Premises or any part thereof (except adjoining sidewalks, curbs, streets or ways), or any use or condition of the Lease Premises or any part thereof (except adjoining sidewalks, curbs, streets or ways).

"Lessee" - As defined in Section 1.8.2.

"Local Tenant" - As defined in Section 3.2.5(H).

"Major" - "Major" shall mean either Broadway or Nordstrom or their successors or assigns.

"Major Tract" or "Major Tracts" - As defined in Section 1.5.1.

"Mall Stores" - "Mall Stores" shall mean the buildings designed for first floor retail and service establishment use located on the Lease Premises as the same may exist from time to time, including any replacements thereof. The Mall Stores do not include any of the improvements located on any Rehabilitation Parcel or Contiguous Parcel.

"Mall Tenant" - "Mall Tenant" shall mean any tenant under an Approved Lease for any portion of the Lease Premises, between Lessee as landlord and such tenant as tenant.

"Minimum Base Rent" - As defined in Section 3.1.1.

"Mortgagee" - As defined in Section 9.1.1.

"Net Awards and Payments" - As defined in Section 12.4.

"Net Cash Flow After Debt Service" - As defined in Section 3.2.5(I).

"Net Insurance Proceeds" - As defined in Section 7.6.2(C).

"Net Worth" - As of a particular date the net fair market value at which all assets of a Person and all subsidiaries of that Person would be shown on a consolidated balance sheet; minus the amount at which liabilities (other than capital stock and surplus) would be shown on such balance sheet, all as determined in accordance with generally accepted accounting principles consistently applied.

"Net Worth Minimum" - As defined in Section 8.2.1(F)(3).

"Non-Disturbance Agreement" - As defined in Section 5.4.5.

"Nordstrom Tract" - As defined in Section 1.5.1.

"Notice of Alternative Terms" - As defined in Section 2.6.1(B)(1).

"Offsite Appurtenant Parking" - As defined in Section 1.7.3.

"Offsite Parking Parcel (or Parcels)" - As defined in Section 1.7.3.

"Onsite Appurtenant Parking" - As defined in Section 1.7.2.

"Onsite Parking Tract" - As defined in Section 1.5.1.

"Operating Expenses" - All expenses incurred in the operation of the Lease Premises or in connection with this Lease, including, without limitation, those incurred by Lessee for any insurance, whether or not required to be carried hereunder and any reasonable management fee charged by Lessee or Lessee's manager, whether or not an Affiliate, if it acts as manager or any management fee charged by a third party, if Lessee is not acting as manager.

"Ott and Parma Rehabilitation Parcels" - As defined in Section 3.2.1(C)(2).

"Overpayment Determination Date" - As defined in Section 3.2.4(E)(6).

"PBIA Tax" - As defined in Section 6.2.

"PBIA Tax Maximum" - As defined in Section 6.2.

"PNA" - As defined in Section 1.8.2.

"Parking Agreement" - As defined in Section 1.7.1.

"Parking Covenants" - "Parking Covenants" shall mean the Parking Covenants executed by Lessee, Broadway and Nordstrom and the owners of the Onsite Parking Tract and Offsite Parking Parcels encumbering the Onsite Parking Tract and the Offsite Parking Parcels.

"Partial Taking" - As defined in Section 12.3.

"Participation Rent Area" - As defined in Section 3.2.5(J).

"Participation Rent Debt Service" - As defined in Section 3.2.5(K).

"Permitted Transferee (and Transferees)" - As described in Section 2.6.1.

"Person" - An individual, a corporation, an association, a partnership, a joint venture, an organization or other business entity, or a governmental or political unit or agency.

"Project Approvals" - "Project Approvals" shall mean any and all consents and approvals, or conditions imposed upon Agency or any other party as a prerequisite to a consent or approval, granted or to be granted by the City or any other governmental agency as a condition to the issuance of a building permit or a certificate of occupancy for the Improvements on the Retail Center.

"Project Area" - As defined in Section 1.4.

"Project Costs" - As described in Exhibit "8."

"Project Site" - As defined in Section 1.1.

"Project Tenant" - As defined in Section 3.2.5(L).

"Projected Net Operating Income" - As defined in Section 9.1.2(B).

"Property" - As defined in Section 13.4.2.

"Reciprocal Easement Agreement" or "REA" - As defined in Section 1.7.1.

"Records" - As defined in Section 3.2.4(E)(1).

"Redevelopment Plan" - As defined in Section 1.3.

"Reference Rate" - As defined in Section 3.2.5(M).

"Rehabilitation" - As defined in Section 3.2.5(N).

"Rehabilitation Office Space" - As defined in Section 3.2.2(A)(3).

"Reininga" - As defined in Section 1.8.2.

"Reininga Entity" - As defined in Section 8.2.

"Relocation and Local Tenant Preference Plan" - As defined in Section 5.3.

"Restoration" - As defined in Section 7.6.2(A).

"Retail Center" - As defined in Section 1.1.

"Sale Notice" - As defined in Section 2.6.1(B).

"Schedule of Performance" - As set forth in Exhibit "4."

"Scope of Development" - As set forth in Exhibit "5."

"Senior Mortgage Payments" - As defined in Section 9.1.2(C).

"Site Map" - As defined in 1.1 and set forth in Exhibit "1."

"Special Capital Expenditure" - As defined in Section 3.2.5(O).

"Special Capital Retail Expenditure Debt Service" - As defined in Section 3.2.2(P).

"State Street Retail Rehabilitation Space" - As defined in Section 3.2.2(A)(3).

"Substitute Major Retailer" - As defined in Section 13.8.1(B).

"Taking" - A transfer during the term hereof of all or any part of the Lease Premises, or any Leasehold or other interest therein or right accruing thereto, as the result or in lieu or in anticipation of, the exercise of the right of condemnation or eminent domain, or a change of grade, street closure or other compensable government activity affecting the Site or any part thereof, except to Agency or City.

"Tenant Improvements" - As defined in Section 3.2.5(Q).

"Trade Equipment" - As defined in Section 7.1.3.

"Total Taking" - As defined in Section 12.2.

"Unavoidable Delay(s)" - Delays or defaults due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; government restrictions or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of the City of Santa Barbara (subject to Section 13.9) or any

other public or governmental agency or entity (other than that acts or failure to act of the Agency) shall not excuse performance by Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that failure to lease or sell or to obtain a satisfactory Mortgage commitment is not an Unavoidable Delay. Written notice by the party claiming such extension shall be given to the other party. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause.

Notwithstanding the foregoing if after Lessee has obtained a Mortgage commitment and/or closed its construction loan for construction of the Improvements required at the Effective Date on the Lease Premises, the lender thereunder fails or refuses to fund or to continue to fund as the case may be under the terms of its commitment or loan due to no fault of Lessee and for reasons beyond the reasonable control of Lessee, or if the lender is in default under the terms of its commitment or loan, Lessee shall have a reasonable period after any of such events within which to satisfy such conditions or obtain a new commitment or loan. Any obligations of Lessee under the terms of this Lease which was dependent upon the funding of such Mortgage commitment or Mortgage loan, may be delayed for such reasonable period as necessary for Lessee to obtain a new Mortgage commitment or loan.

"Underpayment Determination Date" - As defined in Section 3.2.4(E)(5).

"Uninsured Casualty" - As defined in Section 3.2.2(C)(1)(c).

#### ARTICLE 16.0 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Lease is executed in six (6) duplicate originals, each of which is deemed to be an original. This Lease includes one hundred twenty (120) pages of text and nine (9) Exhibits which constitute the entire understanding and agreement of the parties.

In the event that changes in this Lease, including the Exhibits hereto, are required in order to satisfy Lessee's or Agency's financing requirements, or are otherwise necessary to permit the construction and development contemplated hereby, the parties hereby express their mutual intention to negotiate in good faith for the purpose of agreeing upon any such changes as may be required. However, unless and until the parties agree upon any such changes and amend this Lease in the manner herein provided, this Lease and the Exhibits hereto shall remain in full force and effect in accordance with their terms.



Except as otherwise provided in the DDA or this Lease, none of the terms, covenants, agreements or conditions set forth in the DDA shall be deemed to be merged with this Lease, and the DDA shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Lease and the terms and conditions of the DDA, the terms and conditions of this Lease shall control.

All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Agency or Lessee, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Lessee.

Date: February 24, 1989

AGENCY:

ATTEST:

REDEVELOPMENT AGENCY OF  
THE CITY OF SANTA BARBARA

AGENCY SECRETARY

By

[Signature]  
Assistant Agency  
Secretary

By

[Signature]  
Executive Director

APPROVED AS TO CONTENT:

DEPUTY EXECUTIVE DIRECTOR

By

[Signature]  
Housing and Redevelopment  
Manager

APPROVED AS TO FORM:

AGENCY COUNSEL

By

[Signature]  
Assistant Agency Counsel

By

[Signature]  
Special Agency Counsel

Date: \_\_\_\_\_

LESSEE:

SANTA BARBARA ASSOCIATES,  
a California general partnership

By: PASEO NUEVO ASSOCIATES,  
a California limited  
partnership

By   
\_\_\_\_\_  
Its General Partner

By: JMB/PASEO NUEVO ASSOCIATES,  
an Illinois general  
partnership

By: JMB/PN, INC., an  
Illinois corporation,  
Its Managing Partner

By   
\_\_\_\_\_  
DARLA S. TOTUSEK  
Vice President